Decision for dispute CAC-UDRP-102090

Case number	CAC-UDRP-102090
Time of filing	2018-07-13 09:31:41
Domain names	amundpioneer.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	AMUNDI S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Fundacion Comercio Electronico

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has proven that it is an authorised user and as such has a right to enforce rights arising from the following trademark consisting of the term "AMUNDI PIONEER”:

(i) AMUNDI PIONEER (word), International (WIPO) Trademark, priority date 11 July 2017, registration date 11 January 2018, trademark no. 930231, registered for services in class 36.

(referred to as "Complainant's trademark").

The Complainant has also registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term “AMUNDIPIONEER”.

FACTUAL BACKGROUND

According to the Complainant, as the European leader, AMUNDI group of companies is recognized in asset management for product performance and transparency, quality of client relationships based on a long-term advisory approach, efficiency in its organization and teams' promise to serving its clients, commitment to sustainable development and socially responsible

investment policies.

The disputed domain name was registered on 6 July 2018 and is held by the Respondent.

The domain name website (i.e. website available under internet address containing the disputed domain name) provides (likely automatically generated) links to various third party content that is associated or otherwise connected with the Complainant and his business, products bearing Complainant's trademark or otherwise associated with the Complainant.

The Complainant seeks transfer of the disputed domain name to Complainant.

PARTIES CONTENTIONS

The Parties' contentions are the following:

COMPLAINANT:

CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain name is a typical example of so called typosquatting. Typosquatting is a form of cybersquatting, and possibly brandjacking, which relies on mistakes such as typos made by Internet users when inputting a website address into a web browser;

- The disputed domain name is confusingly similar to the Complainant's trademark and its domain names <amundipioneer.com>;

- The removal of the letter "I" and the addition of the gTLD extension ".COM" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademark and it does not change the overall impression of the designation is connected to the Complainants' trademark and its business;

- The Complainant refers to previous domain name decisions concerning such practice and typosquatting in general.

Thus, according to the Complainant the confusing similarity between Complainant's trademarks and the disputed domain name is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name;

- The Complainant has not authorized, permitted or licensed the Respondent to use the Complainant's trademark in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name;

- No bona fide use of the disputed domain name has been established also because the disputed domain name website is a mere parking page with automatically generated commercial links related to the Complainant and its activity.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's trademark predates the disputed domain name registration and such trademarks are well-known in relevant business circles. The Respondent can be considered to be aware of the Complainant's trademark when registering the disputed domain name due to well-known character thereof and also because it made various references to the Complainant's trademark on the domain name website;

- It is well-founded that registration of the disputed domain name that is confusingly similar to the Complainant's trademarks which enjoys strong reputation, plus other facts, such as above described no genuine use of the disputed domain name, are sufficient to establish bad faith under the 4(a)(iii) of the Policy;

- The Complainant refers to previous domain name decisions contending that (i) registering a domain name incorporating trademarks that enjoy high level of notoriety and well-known character and (ii) abusive use of such trademarks on the domain name website with an aim to mislead the public about origin of the website and services offered through it, both constitute prima facie registration and use in bad faith.

The Complainant presents the following evidence which has been assessed by the Panel:

- Information about the Complainant and its business;
- Excerpts from a trademark database regarding Complainant's trademark;
- Screenshots of the disputed domain name website;
- Google search result for a query “AMUNDI PIONEER”.

RESPONDENT:

The Respondent has not provided any response to the Complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

RIGHTS

The disputed domain name and the Complainant’s trademarks are confusingly similar the disputed domain name almost fully incorporates a distinctive word elements “AMUNDI PIONEER” that enjoys high level of notoriety at least in relevant business and customer circles.

Omission of a letter “l” from the disputed domain name cannot prevent the association in the eyes of internet consumers between the disputed domain name and the Complainant’s trademark and thus the likelihood of confusion still exists.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the “.com”) must be disregarded under the identity and confusing similarity tests as it is a necessary technical requirement of registration.

Therefore, the Panel has decided that there is a confusing similarity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant’s assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

The Respondent, in particular, used the disputed domain name (which include Complainant’s Trademarks) for in order to present automatically generated links (“pay-per-click”) to content related to the Complainant and its activity.

As a result, the Panel concludes that there is no indication that the disputed domain name was intended to be used in connection with a bona fide offering of goods or services as required by the Policy.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

BAD FAITH

As described above, the Complainant has proven that the Respondent has used (at least for some time) the disputed domain name solely for purposes of presenting automatically generated links (“pay-per-click”) to content related to the Complainant and its activity.

For the reasons described above, since (i) there is only a remote chance that the Respondent has registered the disputed domain name just by a chance and without having any knowledge about the existence of the Complainant’s rights and business (ii) the use of the dispute domain name is not compliant with fair business practices, the Panel contends, on the balance of probabilities, that the disputed domain name has been registered and is being used by the Respondent in bad faith.

Thus, the Panel has taken a view that the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **AMUNDPIONEER.COM**: Transferred

PANELLISTS

Name	**JUDr. Jiří Čermák**

2018-08-17

DATE OF PANEL DECISION 2018-08-17

Publish the Decision