Decision for dispute CAC-UDRP-102286

Case number	CAC-UDRP-102286
Time of filing	2019-01-03 12:09:07
Domain names	amundi.capital

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	AMUNDI ASSET MANAGEMENT

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Jon Mac

OTHER LEGAL PROCEEDINGS

Panel is not aware of any other legal proceedings pending or decided which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the international trademark no 1024160 AMUNDI registered since September 24, 2009 for inter alia financial services.

The Complainant is also the owner of the domain name <amundi.com>, registered and used since August 26, 2004.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

AMUNDI ASSET MANAGEMENT is a subsidiary jointly created in 2010 by Crédit Agricole (80%) and Société Générale (20%) to regroup their activities of asset management. It ranks in the worldwide top 10 in the asset management industry, with more than 100 million customers worldwide. The Complainant is Europe's number one asset manager and has offices in 37 countries in Europe, Asia-Pacific, the Middle-East and the Americas.

The disputed domain name <amundi.capital> was registered on December 21, 2018.

The disputed domain name points to a page displaying the message: “Account Suspended This Account has been suspended Contact your hosting provider for more information”.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT CONTENTIONS:

The disputed domain name is identical to the Complainant’s trade mark for the purposes of the Policy.

The Respondent does not have any rights or legitimate interest in the disputed domain name.

According to the WIPO Case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Complainant asserts that the Respondent is not known as the disputed domain name, but as "Jon Mac".
Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. Please see for instance:

-FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).”);
-FORUM Case No. FA 699652, The Braun Corporation v. Wayne Loney.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <amundi.capital> and that he is not related in any way to the Complainant’s business.

The Complainant contends that the Respondent is not affiliated with the Complainant nor authorized by it in any way to use the trademark AMUNDI®. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Furthermore, the disputed domain name points to a page displaying the message: “Account Suspended This Account has been suspended Contact your hosting provider for more information”. Therefore, the Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Please see for instance:
- WIPO Case No. D2018-0145, Covestro Deutschland AG v. Kay Mone / KMN INC. (finding lack of rights or legitimate interests where domain name resolved to page containing "account suspended" message).
- FORUM Case No. FA 1647176, Noodle Time, Inc. v. Takuomi Mochida / Venture-Net Co. (“Respondent’s domain, as resolved for Complainant on November 5, 2015, displays a page bearing the message, “Account Suspended, This Account has been suspended. Contact your hosting provider for more information.” […] Accordingly, the Panel determines that Respondent’s inactive use of the domain does not fall within Policy paragraph 4(c)(i) or paragraph 4(c)(iii). “)

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain name.

The domain name(s) has been registered and is being used in bad faith.

The Complainant contends the trademark AMUNDI® is well-known. Please see CAC case No. 101803, AMUNDI v. John Crawford (“The trademark of Complainant has been existing for a long time and is well-known. Respondent knew or should have known that the disputed domain name included Complainant’s trademark.”)

Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. Please see for instance WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

Furthermore, the disputed domain name points to a page displaying the message: “Account Suspended This Account has been suspended Contact your hosting provider for more information”. The Respondent fails to make active use of the disputed domain name. Failure to make active use of a domain name may be evidence of bad faith.

Please see FORUM Case No. FA 1560999, NYX, Los Angeles Inc. v. Mary Parker (“Respondent’s failure to make active use of and failure to show demonstrable preparations to use the disputed domain names constitutes bad faith registration and use. “)

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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

The disputed domain name is confusingly similar to the Complainant’s well known registered trade mark AMUNDI adding only the gTLD .capital which does not prevent confusing similarity between the disputed domain name and the Complainant’s trade mark. Please see CAC case No. 101803, AMUNDI v. John Crawford (“The trademark of Complainant has been existing for a long time and is well-known. Respondent knew or should have known that the disputed domain name included Complainant’s trademark.”) Please see for instance FORUM Case No. FA 1801812, Bittrex, Inc. v. Pavel Romanov / Private Person <bittrex.capital> (“The gTLD “.capital” does not serve to distinguish the Domain Name from the BITTREX mark, which is the distinctive component of the Domain Name.”)

The Respondent does not appear to be commonly known by the disputed domain name, but Jon Mac is recorded on the Who Is. Please see for instance:
-FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).”)

Since there is no use of the disputed domain name it has not been used for a bona fide offering of goods or services or a legitimate non commercial or fair use. The Complainant has not authorised the Complainant to use the disputed domain name. The Respondent does not have rights or legitimate interests in the disputed domain name.

Lack of use can be an indication of bad faith where there is a registration of a well-known name without any apparent justification. The Respondent has not answered the Complaint or explained why it should be able to register the Complainant's well known mark in the gTLD .capital which suggests the disputed domain name is to be used for financial services and suggests the Respondent is aware of the Complainant and its business. Accordingly the Panel is convinced that the disputed domain name is a cybersquatting registration which has been passively held and not used and the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AMUNDI.CAPITAL**: Transferred

PANELLISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2019-02-06

Publish the Decision