Decision for dispute CAC-UDRP-102298

Case number	CAC-UDRP-102298
Time of filing	2019-01-11 10:01:30
Domain names	voamundi.com

Case administrator

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

Complainant

Organization	AMUNDI ASSET MANAGEMENT

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Patricia Costa

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any pending or decided legal proceedings that are related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has proved to be owner of the International word trademark "AMUNDI", registered on September 24, 2009 in the Int. class (Nice Classification) 36, based on the French trademark no. 093654657 filed on June 4, 2009, designating under the Madrid Protocol Australia, Bahrein, the EU, Japan, Republic of Korea, Norway, Singapore, Turkey, the US, Switzerland, China, Egypt, Liechtenstein, Morocco, Monaco, Russian Federation, Ukraine, Vietnam.

FACTUAL BACKGROUND

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

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 it is not legitimate non-commercial or fair use of the disputed domain name. The Complainant contends that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name.

Please see FORUM Case No. 1785596, King Ranch IP, LLC v. E Miller ("Additionally, Respondent makes no material demonstrable preparations to use the <kingranchbbq.com> domain name. The domain name simply links to a parking page. Holding a confusingly similar domain name inactively, as does Respondent, is not indicative of any bona fide offering of goods or services under Policy paragraph 4(c)(i), nor of a non-commercial or fair use under Policy paragraph 4(c)(iii).").

The incorporation of a well-known trade mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. This Panel refers to the decision of Telstra Corporation Limited v. Nuclear Marshmallows WIPO (Case No. D2000-0003), which was summarised by the panel in Soda LLC v. SIMPLEDOLLAR.COM (Case No. D2016-0038) as follows: "The UDRP panel in the [Telstra] decision... found that passive holding of a domain name can constitute use in bad faith… in the present case, no positive action was being taken by the respondent in relation to the domain name and the panel concluded that such non-use constituted bad faith."

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has not, 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 not, 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 not, 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

1. Identical or confusingly similar

The Complainant contended that the disputed domain name <voamundi.com> is confusingly similar to the Complainant's trademark "AMUNDI", which the Panel cannot agree with. Although it is true that the disputed domain name incorporated the Complainant's trademark "AMUNDI" in full, the word "MUNDI" is a fairly common words used in Latin languages and the term "VOA MUNDI" potentially means "fly (around) the world" in Portuguese, the official language spoken in Brazil where the Respondent is located as indicated by WHOIS information.

In addition, this present case is factually distinctive with past cases as cited by the Complainant in the Complaint, in which either the disputed domain name was exactly the same as the Complainant's trademark (WIPO Case No.101442 <amundi.ir>), or disputed names containing terms that suggest certain close relatedness of the disputed domain names and the Complainant's trademark (CAC Case No. 101593 <amundi-uk.com>, CAC Case No. 101483 <amundipioneer.com>), supporting a finding of confusingly similarity. Those elements are not present in this case where the Respondent seems to have picked up a term in his/her native language that happens to have in part contained the Complainant's trademark.

The Panel therefore concludes that the disputed domain name is not confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights of legitimate interests

Although the Respondent did not file an administratively compliant (or any) response. The Complainant is still 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 Policy.

The Panel finds no issues supporting the Complainant's contention that the Respondent is not affiliated with it 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.

However, the Panel does not agree with the Complainant's further inference that the Respondent is not known as the disputed domain name or has no rights or legitimate interests in the domain name.

In accordance with UDRP Policy, "rights or legitimate interests" associated with a disputed domain name could have arisen in many ways. Paragraph 4(c) of the UDRP Policy clearly states circumstances, in particular but without limitation, if found by the Administrative Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the domain name registrant's rights or legitimate interests to the domain name for the purposes of Paragraph 4(a)(ii) of the Policy, which includes whereas (iii) "the domain name registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue." Since in this case the Respondent has not submitted any submission, we cannot be certain if the Respondent has acquired any trademark right in relationship to "VOA MUNDI" in the jurisdiction that the Respondent is located (i.e. Brazil). However, even if the Respondent has not acquired the above-mentioned trademark rights, it looks like the domain name registrant is making a legitimate use of the domain name without any intent to misleadingly divert consumers at issue. The Respondent registered the trademark and has well planning advertising his/her travel businesses online linked to her registered domain name "VOA MUNDI". The different nature and geographical focus of the Complainant's and the Respondent's businesses have also made it extremely difficult for the Respondent to have intended to misleading any of Complainant's existing or future customers, rather than developing its own.

The Panel also cannot find evidence supporting the Complainant's assertion that "the disputed domain name points to the registrar parking page". The website linked to the disputed domain name seems offering legitimate business offering of the Respondent's travel businesses.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Complainant has failed to establish that Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has first inferred that "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." The Panel has no issue agreeing with the Complainant that its trademark is well-known in Europe and MANY other countries in the world, but is not similarly confident inferring that it is so well-known in ANY region of the world, such as Brazil, where the Respondent is located and the Complainant has not had any establishment. Therefore, the Panel is not persuaded that the Respondent MUST have knowledge of the Complainant's reputable trademark.

Furthermore, the Panel is not able to find that the website in connexion with the disputed domain name <voamundi.com> points to a registrar parking page. The Panel found that the domain name is in connection with a bona find offering of the Respondent's legitimate offering of her travel businesses, which is in a different area from the Complainant's businesses.

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the disputed domain name was 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

Rejected

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

1. **VOAMUNDI.COM**: Remaining with the Respondent

PANELLISTS

Name	**Carrie Shang**

DATE OF PANEL DECISION 2019-02-07

Publish the Decision