Decision for dispute CAC-UDRP-102646

Case number	CAC-UDRP-102646
Time of filing	2019-08-27 11:56:39
Domain names	amudipioneer.com

Case administrator

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

Complainant

Organization	AMUNDI S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Fundacion Comercio Electronico

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of French trade mark no. 4375549 for AMUNDI PIONEER, registered on 3 November 2017 in class 36.

FACTUAL BACKGROUND

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

The Complainant, is a subsidiary jointly created in 2010 by Crédit Agricole and Société Générale to regroup their activities of asset management.

The Complainant owns international trade mark number 1398148 AMUNDI PIONEER, registered on 11 January 2018.

The Complainant also owns several domain names incorporating the trade mark AMUNDI PIONEER, such as <amundi-pioneer.com> created on 10 March 2017 and <amundipioneer.com> created on 20 February 2017.

The disputed domain name was registered on 12 August 2019. It points to a parking page with commercial links.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark 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

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:

(i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.

(ii) The Respondent has no rights or legitimate interests in the disputed domain name.

(iii) The disputed domain name has been registered and used in bad faith.

A. Confusingly similar to a trade mark

The Complainant contends that the disputed domain name is confusingly similar to the trade mark AMUNDI PIONEER and asserts that:

1. The removal of the letter "n" 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 trade marks, and does not change the overall impression that the disputed domain name is connected to the trade mark AMUNDI PIONEER. (See FORUM case no. FA 1767748, Republic Services, Inc. v. ICS Inc.)

2. This is a clear case of "typo-squatting“ in that the disputed domain name contains an obvious misspelling of the Complainant’s trade mark: AMUDIPIONEER instead of AMUNDI PIONEER. Previous panels have found that a slight spelling variation does not prevent a disputed domain name from being confusingly similar to the Complainant’s trade mark. (See CAC case no. 100909, Arcelormittal v. arcelormittal.)

3. Past panels have confirmed the Complainant’s rights to “AMUNDI PIONEER”. (See CAC Case no. 101951, AMUNDI S.A. v. Privacy Services Limited.)

As numerous panels have found, the generic top-level suffix ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

The Panel is satisfied that the Complainant owns the trade mark registration for AMUNDI PIONEER, which predates the registration of the disputed domain name. Apart from the omission of the letter "n", the disputed domain name incorporates the Complainant's trade mark in its entirety. In a side-by-side comparison, the overall impression is that the disputed domain name is confusingly similar the Complainant's trade mark AMUNDI PIONEER.

The Panel finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. Lack of rights or legitimate interests

The Complainant says that the Respondent does not have any rights or legitimate interest in the disputed domain name and contends that:

1. The Respondent is not affiliated with nor authorised by the Complainant in any way.

2. The Complainant does not carry out any activity for, nor has any business with the Respondent.

3. The disputed domain name points to a parking page with commercial links. Past panels have found that such use is not a bona fide offering of goods or services or legitimate non-commercial or fair use. (See FORUM case no. FA 970871, Vance Int'l, Inc. v. Abend.)

The Panel finds that Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name and therefore, the burden of proof shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name.

The Respondent has not filed a Response and there is no evidence to show that the Respondent has used, or has been preparing to use, the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate non-commercial or fair use, without intent for commercial gain. A parking page with commercial links is not a bona fide offering of goods or services nor a legitimate non-commercial or fair use.

The Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. Registration and use of the disputed domain name in bad faith.

The Complainant contends that the disputed domain name has been registered and is being used in bad faith and states:

1. The disputed domain name is confusingly similar to its distinctive trade mark AMUNDI PIONEER. A Google search on the term AMUNDI PIONEER provide several results, all of which are linked with the Complainant and the takeover of the company Pioneer Investments. The Respondent could not have ignored the Complainant's trade mark AMUNDI PIONEER when it registered the disputed domain name, and its registration of a confusingly similar name cannot have been a coincidence. (See FORUM case no. FA 94313, Samsonite Corp. v. Colony Holding.)

2. The similarity between the disputed domain name and the Complainant's trade mark makes it highly implausible that Respondent's registration of a confusingly similar domain name was not an intentional effort to capitalise on or otherwise take advantage of the likely confusion with Complainant's trade mark.

3. The Respondent’s website is used for a parking site with commercial links related to the Complainant. The Respondent deliberately set out to cause confusion, to cause mistake, and to deceive as to the affiliation, connection or association of Respondent with the Complainant. In doing so, the Respondent has shown bad faith registration. Panels have found a bad faith attempt to confuse and attract internet users for commercial gain where a Respondent displayed advertisements on its disputed domain. (See FORUM case No. FA 1786279, Airbnb, Inc. v. / .)

Taking into account the uncontested submissions of the Complainant and the evidence submitted with the Complaint, the Panel finds that the Complainant has proved that the Respondent has registered and used the disputed domain name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AMUDIPIONEER.COM**: Transferred

PANELLISTS

Name	**Veronica Bailey**

DATE OF PANEL DECISION 2019-10-06

Publish the Decision