Decision for dispute CAC-UDRP-103024

Case number	CAC-UDRP-103024
Time of filing	2020-04-23 10:02:05
Domain names	amundi-capital.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	AMUNDI ASSET MANAGEMENT

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Amundi

OTHER LEGAL PROCEEDINGS

The Complainant has declared that there are no other legal proceedings, pending or decided, which relate to the disputed domain name. The Panel is not aware of any such proceedings.

IDENTIFICATION OF RIGHTS

The Complainant's trademark AMUNDI was registered on 29 September 2009 in class 36 (various financial services), in France and via the Madrid system (102416) - designated in territories including the United States.

FACTUAL BACKGROUND

The Complainant is a financial services corporation, with its seat in Paris, France. Its activities are in asset management, and it operates across multiple territories. The Complainant operates websites setting out details of its services at <AMUNDI.COM> (registered on 26 August 2004) and at various other domain names containing the string AMUNDI accompanied by other terms (e.g. <AMUNDI-FUNDS.COM>).

The Respondent Amu Ndi, purporting to have an address in New York, USA, registered the disputed domain name <AMUNDI-CAPITAL.COM> on 14 April 2020.

PARTIES CONTENTIONS

No administratively compliant response has been filed. Neither the written notice of the Complaint nor the advice of delivery

was returned to the Provider; emails sent to the Respondent were successfully relayed, but the Respondent never accessed the online platform.

The Complainant contends that the disputed domain name was registered and is being used in bad faith by the Respondent, emphasising (as considered further below) factors including the lack of any contact between the Complainant and Respondent, the redirection of Internet users (through the Respondent's configuration of the disputed domain name) to the Complainant's own website, and the well-known nature of its mark (which has been confirmed in a range of cases under the Policy). It asks for the disputed domain name to be transferred to itself.

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).

The disputed domain name can be distinguished from the Complainant's mark AMUNDI, in two respects (disregarding the gTLD .com, as is normal practice in disputes under the Policy). One is the presence, in the disputed domain name, of a hyphen; the second is the presence, again in the disputed domain name, of the string 'CAPITAL'. The Panel finds that the result is still confusingly similar to the mark in which the Complainant has rights. In particular, this is easily understood as a situation where a mark is accompanied by a descriptive term - in this case, a term which has as one of its meanings the services provided by the Complainant under its mark ('capital' in the financial services sense). (See further WIPO Jurisprudential Overview, 3rd edition, para 1.8). While this is indeed a word with a range of meanings, such can be more appropriately considered under the second and/or third element of the Policy where appropriate.

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).

The Respondent has described itself as 'Amu Ndi', and supplied an email address containing the text 'amundi.capital' at an email provider. A postal address for an office in New York City is supplied, though the Panel is not able to confirm the accuracy of this information. It is quite unlikely that the name provided is the real name of the Respondent, given the close similarity with the distinctive name of the Complainant and the complete failure of the Respondent to participate. The Complainant adds that the Respondent is neither affiliated with nor authorised by it (the Complainant) in any way, and that no licence or authorisation has been granted to the Respondent to make use of its mark.

The Complainant notes that the disputed domain name, at the time at which the Complaint was filed, was configured by the Respondent to redirect users to the Complainant's website. As the Complainant argues, citing cases including Forum FA 1766366, Lockheed Martin Corporation v Richard F Ambrose / Lockheed Martin Corporation, this does not constitute, for the purposes of the Policy, the bona fide offering of goods or services by means of the domain name under Policy, or a legitimate noncommercial or fair use of it.

The Panel has not been able to identify any remotely plausible rights or legitimate interests in the present case.

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).

The Complainant relies here on the combination of the well-known nature of the mark AMUNDI, which would have been known to the Respondent at the point of application (citing, among others, WIPO Case No. 2019-1335, Amundi Asset Management v Whois Privacy Protection Foundation / daniel, clark), and the above-mentioned decision of the Respondent to implement a redirect to the Complainant's own website.

This approach to redirection is described in Bettinger and Waddell, Domain Name Law and Practice, 2nd edition, Oxford

University Press 2015, as 'an unusual pattern of conduct' albeit one where panels applying the Policy 'have routinely held that such behaviour constitute bad faith use of the disputed domain name, particularly as it demonstrates that the respondent was aware of the complainant and the trademark value of the domain' (para IIIE.382). The Panel adopts this formulation in so far as it is a useful rebuttable presumption, and finds no plausible rebuttal in the present case (whether from the Respondent or even the Panel's own reading of the record). It is not necessary - or indeed possible, in this case - to speculate further regarding why the Respondent has acted in this way, though the Panel agrees with the finding of another Panel, in CAC Case 101989 ArcelorMittal SA v Jeton Heta, that the fact that a Respondent acting in this way 'may change the redirection of the disputed domain name to the Complainant's website at will thus diverting Internet traffic from the Complainant to the Respondent' is highly relevant. The Panel therefore concludes that the Respondent has 'intentionally attempted to attract, for commercial gain, Internet users to [its] web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement' (Policy, para 4(b)(iv)).

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

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark AMUNDI, and that the disputed domain name is confusingly similar to this mark (differing only by the addition of a hyphen and the text CAPITAL). The Panel finds that the disputed domain name was registered and is being used in bad faith, noting in particular the redirection (to the Complainant's website) that was in place. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AMUNDI-CAPITAL.COM**: Transferred

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2020-05-28

Publish the Decision