Decision for dispute CAC-UDRP-103659

Case number	CAC-UDRP-103659
Time of filing	2021-03-16 09:30:47
Domain names	amundiassmanagement.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	AMUNDI ASSET MANAGEMENT

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Nicole Vansebrouk

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a number of trade marks for AMUNDI including, by way of example only, International Trade Mark, registration number 1024160 for AMUNDI in class 36, registered on September 24, 2009.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:
The Complainant is a substantial asset manager with offices in 36 countries. It has over €1.71 trillion in assets under management and over 100 million retail, institutional and corporate clients. The Complainant owns several trade marks for AMUNDI, including the mark referenced above. In addition, the Complainant owns the domain name <amundi.com>, which resolves to its primary website, as well as other domain names comprising or including its AMUNDI trade mark.

The disputed domain name was registered on March 9, 2021. It resolves to a holding page which contains the following wording: “A New WordPress Site. Coming Soon!”.

The disputed domain name incorporates the Complainant’s AMUNDI trade mark in its entirety and simply adds the words

“ass” (an abbreviation for “asset”) and “management”. The addition of these terms is insufficient to avoid the likelihood of confusion.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Respondent is not affiliated with, nor authorised by, the Complainant in any way, nor is it licensed to use the Complainant’s name or mark. Having regard to the fact that the disputed domain name resolves to a holding page, the Respondent has not shown any activity in respect of the disputed domain name and it is not possible to conceive of any plausible, actual or contemplated active use of it that would not be illegitimate, such as passing off or an infringement of the Complainant’s trade mark rights.

The Respondent has registered and is using the disputed domain name in bad faith. The fact that the disputed domain name combines the Complainant’s AMUNDI trade mark with the terms “ass” (for “asset”) and “management” is a strong indication that the Respondent was targeting the Complainant at the time of registration. Given the distinctiveness of the Complainant’s trade marks and its reputation, it is reasonable to infer that the Respondent registered and used the disputed domain name with full knowledge of the Complainant’s trade mark. Moreover, the incorporation of the Complainant’s well-known trade mark within the disputed domain name, coupled with the inactive status of the webpage to which it resolves, is itself evidence of bad faith registration and use.

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 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

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:

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

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

Rights

So far as the first element is concerned, the Complainant's trade mark registrations for AMUNDI including the trade mark in respect of which full details are provided above, establish its rights in the trade mark.

For the purpose of comparing the disputed domain name with the Complainant's mark, it is established practice to disregard the generic Top-Level Domain, that is ".com" in the case of the disputed domain name, as this is a technical requirement of registration. The remaining element of the disputed domain name comprises the Complainant's trade mark, in full followed by the letters "ass" (which Internet users will perceive in this context as an abbreviation for "asset") and the word "management". The Complainant's mark is clearly recognizable within the disputed domain name and the additional elements do not serve to prevent the disputed domain name from being found confusingly similar to it. See, by way of example, CAC Case No. 103016, Novartis AG v unlocking guru; "An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion". The Panel accordingly finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

Rights and legitimate interests

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarised briefly: (i) if the respondent has been using the domain name in connection with a bona fide offering of goods and services; (ii) if the respondent has been commonly known by the domain name; or (iii) if the respondent has been making a legitimate non-commercial or fair use of the domain name.

The only known use of the disputed domain name, has been to resolve to a holding page which simply contains the words: "A New WordPress Site. Coming soon!". A web page with these characteristics does not constitute use of a domain name in connection with a bona fide offering of goods and services; see, by way of example, CAC Case No. 103361, Bouygues v Alloud Franck Jean-Claude.

There is no evidence that the Respondent has been commonly known by the disputed domain name, nor does the Respondent's holding of the domain name amount to making a legitimate non-commercial or fair use of it. Furthermore, as the disputed domain name, is similar to the Complainant's mark, it carries with it a risk of implied affiliation.
The Complainant having made out a prima facie case in relation to the second element, the burden of proof shifts to the Respondent to rebut it; see, for example, CAC Case No. 102333, Amedei S.r.l. v sun xin. In the absence of any response by it to the Complaint, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

The Panel accepts the Complainant's submission that, given the distinctive nature of the Complaint's AMUNDI trade mark, it is highly improbable that the Respondent registered the disputed domain name without an awareness of the Complainant and its trade mark rights.

So far as bad faith use is concerned, the circumstances of the Respondent's registration and use of the disputed domain name fall within the doctrine of passive holding and the principles set out initially in the decision of Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. These principles are also of application not only to inactive websites but also when domain names resolve to "coming soon" webpages, such as that to which the disputed domain name resolves.

Factors which are typically considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details and (iv) the implausibility of any good faith use to which the domain name may be put.

All of these factors are applicable to the current circumstances. First, the Complainant's mark is distinctive and well-known. Second, the Respondent has not submitted a response or provided any evidence of good faith use. Third, the Respondent sought to conceal its identity through use of a privacy service. Finally, having regard to the characteristics of the disputed domain name, as outlined above, it is impossible to think of any good faith use to which it could be put. Accordingly, in the circumstances of this case, the inactive status of the disputed domain name comprises bad faith use under the doctrine of passive holding.

For these reasons the Panel finds that the disputed domain name was both registered and is being 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. **AMUNDIASSMANAGEMENT.COM**: Transferred

PANELLISTS

Name	**Antony Gold**

DATE OF PANEL DECISION 2021-04-16

Publish the Decision