

Decision for dispute CAC-UDRP-104074

Case number **CAC-UDRP-104074**

Time of filing **2021-10-12 09:33:44**

Domain names **amundie-ee.com**

Case administrator

Organization **Denisa Bilík (CAC) (Case admin)**

Complainant

Organization **AMUNDI ASSET MANAGEMENT**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Organization **Above.com Domain Privacy**

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 International Trademark Registration n. 1024160 "AMUNDI", granted on September 24, 2009 in connection with class 36.

FACTUAL BACKGROUND

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

The Complainant is a subsidiary entity, 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. It also owns a 2009 International Registration for the AMUNDI trademark as well as the <amundi.com> and <amundi-ee.com> domain names which were registered in 2004 and 2009, respectively.

The disputed domain name was registered on October 6, 2021 and resolves 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 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

Trademark Rights and Identity or Confusing Similarity

The Complainant claims trademark rights in the word AMUNDI for various banking, insurance, investment products, and related financial services dating back to 2009. Sufficient evidence has been submitted, in the form of a screenshot from the WIPO.int website, showing an International Registration for such trademark in the name of the Complainant. Further, the Complainant is the owner of the <amundi.com> and <amundi-ee.com> domain names, amongst others, that incorporate its trademark. These were registered in 2004 and 2009, respectively. As such, the Panel finds that the Complainant possesses rights in its AMUNDI trademark.

Next, UDRP panels have consistently held that where the asserted trademark is recognizable within a disputed domain name, a minor misspelling or the addition of generic terms does not prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy. The disputed domain name, which was registered long after the Complainant's trademark rights came into existence, is a misspelling of the trademark AMUNDI adding the letter "E" at the end of the mark, a hyphen, and the additional letters "ee". The domain name further adds the ".com" gTLD. Thus, the Complainant asserts that the second level of the disputed domain name is confusingly similar to the asserted trademark and will lead internet users to wrongly believe that the disputed domain name is endorsed by the Complainant. Prior panels have found confusing similarity under similar fact situations. *Star Stable Entertainment AB v. Carolina Rodrigues*, 103789 (CAC May 5, 2021) ("The disputed domain name [<starstsbale.com>] consists of the Complainant's whole trademark (STAR STABLE), written in a misspelled way, with an 's' instead of an 'a' in the middle of the second word. Such misspelling is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant."); *LEGO Juris A/S v. DBA David Inc/ DomainsByProxy.com*, D2011-1290 (WIPO September 20, 2011) ("the mere addition of the words 'Ninjago' and 'Kai' is not sufficient to exclude the likelihood of confusion between the disputed domain name [<legoninjakokai.com>] and the Complainant's [LEGO] trademark.").

Furthermore, the extension ".com" typically adds no meaning or distinctiveness to a disputed domain name and may be disregarded in the paragraph 4(a)(i) analysis. *Novartis AG v. Wei Zhang*, 103365 (CAC December 9, 2020) ("it is generally accepted that the addition of the top-level suffix in the domain name (e.g., '.com') is to be disregarded under the confusing similarity test").

In light of the above, the Panel concludes that the Complainant possesses rights to its claimed trademark and that the disputed domain name is confusingly similar thereto under Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy directs an examination of the facts to determine whether a respondent has rights or legitimate interests in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, under Paragraph 4(c)(i), is where “before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services”. Here, the Respondent is using the disputed domain name to resolve to a parking page that contains pay-per-click links which, in turn, redirect Internet users to a variety of third-party websites that are not associated with the Complainant. The Complainant submits into evidence a screenshot of the Respondent’s website. Past decisions under the Policy have held that such use of a confusingly similar domain name is not a bona fide offering of goods or services. See, e.g., *Loro Piana S.p.A. v. Y. v. Oostendorp*, 101335 (CAC March 26, 2018) (use of a disputed domain name that copies the complainant’s trademark to resolve to a pay-per-click website “cannot be considered a bona fide offering of goods or services....”). The Respondent has filed no Response nor has it made any other submission in this case. Based on the available evidence, the Panel concludes that the Respondent is using the disputed domain name to seek pay-per-click revenue through those diverted Internet users who are trying to reach the Complainant but, due to the confusing similarity of the disputed domain name with the Complainant’s trademark, end up at the Respondent’s website instead. Such activity is not a bona fide offering of goods or services and so it does not afford the Respondent any rights or legitimate interests in the disputed domain name.

The second example, under Paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. Complainant states that “Respondent is not affiliated with ... nor authorized ... in any way to use the trademark AMUNDI.” Complainant has submitted a copy of the Whois record for the disputed domain name and this only identifies the Registrant of the disputed domain name as “Above.com Domain Privacy”. Thus, there is no evidence in this case to suggest that the Respondent is commonly known by the disputed domain name, that it is licensed or otherwise authorized to use the Complainant’s trademark, or that it has acquired any trademark rights relevant thereto. As such, this sub-section of the Policy is of no help to the Respondent.

As to the third and final example, under Paragraph 4(c)(iii) of the Policy, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark. As the disputed domain name resolves to a pay-per-click website with links to third-party commercial businesses, this does not rebut the Complainant’s assertion that its use is not fair as Respondent’s activity appears to be commercial in nature and does not fit into any accepted category of fair use such as news reporting, commentary, political speech, education, nominative or generic use, etc.

In light of the above, and with no Response or other submission in this case to rebut the Complainant’s assertions and evidence, the Panel finds that the facts of this case do not demonstrate that the Respondent has any rights or legitimate interests in the disputed domain name under Paragraph 4(a)(ii) of the Policy.

Bad Faith

Finally, the Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. *Hallmark Licensing, LLC v. EWebMall, Inc.*, D2015-2202 (WIPO February 12, 2016) (“The standard of proof under the Policy is often expressed as the ‘balance of the probabilities’ or ‘preponderance of the evidence’ standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.”).

The Complainant first asserts 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.” Complainant submits copies of its above-mentioned trademark registration as well a screenshot of its www.amundi.com website home page and this clearly exhibits rights in its claimed trademark. However, this limited evidence, alone, does not adequately speak to the

reputation that the trademark may have achieved with the relevant segment of the public. Nevertheless, it has been held in prior decisions that a Respondent's activity can, itself, form the basis upon which to build a finding of bad faith domain name registration. HRB Innovations, Inc. v. VMI INC, FA 1967119 (FORUM November 4, 2021) (As the domain name "<taxhrblock.com> is a clear combination of the Complainant's trademark together with a word that describes the services offered by the Complainant, the Panel concludes that Respondent did have actual knowledge of Complainant's right in its trademark, which support a finding of bad faith under Policy paragraph 4(a)(iii)."). The Complainant's trademark is somewhat distinctive and the disputed domain name is a mere one-letter variation on the Complainant's own <amundi-ee.com> domain name. With no explanation or submission from the Respondent to dispute the Complainant's assertions or the presented facts of this case, this Panel concludes that it is more likely than not that the Respondent registered the disputed domain name with actual knowledge of the Complainant's trademark rights.

Next, the Complaint asserts that the disputed domain name is being used for a pay-per-click website to divert users to other commercial sites based upon confusion with the Complainant's trademark. Such activity has routinely been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant's trademark. Arla Foods Amba v. I S / ICS INC, 101764 (CAC December 22, 2017) (bad faith is found in a case where "the Disputed domain name is pointing to a pay-per click website using advertisements and is not used with real content.").

Finally, the Complainant asserts that Respondent's actions constitute typosquatting, the practice of registering a domain name in an attempt to take advantage of internet users' typographical errors. This has been held to support a finding of bad faith registration and use in other cases. Sub-Zero, Inc. v. Viljami Ylönen / INTL Enterprises, FA 1965059 (FORUM November 5, 2021) ("Typosquatting may act as independent evidence of bad faith per Policy paragraph 4(a)(iii).") citing Finish Line, Inc. and its subsidiary Spike's Holdings, Inc. v. XU SHUAI WEI / XUSHUAIWEI, FA 1577968 (FORUM October 9, 2014) ("The <finishlne.com> domain name is a typosquatted version of the FINISH LINE mark, which further supports a finding of bad faith under Policy paragraph 4(a)(iii).") As the disputed domain name adds an extra letter "e" to the Complainant's mark as well as to a legitimate domain name owned by the Complainant, it appears to this Panel that the Respondent is engaging in typosquatting which indicates an intent to create confusion in bad faith.

In light of the evidence presented and in accordance with paragraphs 4(b)(iii) and 4(b)(iv) of the Policy, the Panel finds that the disputed domain name has been used in bad faith as it diverts users away from Complainant's own websites and create a likelihood of confusion with the AMUNDI trademark by resolving to a website for the commercial gain of either the Respondent or of those entities to whom the pay-per-click links resolve. In Focus Do It All Group v. Athanasios Sermbizis, D2000-0923 (WIPO October 12, 2000), the Panel found that "[I]t is enough that commercial gain is being sought for someone "for a use to be commercial".

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all of the elements of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **AMUNDIE-EE.COM:** Transferred

PANELLISTS

Name	Steven M. Levy, Esq.
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DATE OF PANEL DECISION	2021-11-08
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Publish the Decision