

Decision for dispute CAC-UDRP-104317

Case number	CAC-UDRP-104317
Time of filing	2022-02-01 08:38:20
Domain names	AmAnCreditcard.com, AmAnGiftCard.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Aman Group S.à.r.l.
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Complainant representative

Organization	HSS IPM GmbH
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Respondent

Name	Mazen Muhtaseb
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant invokes numerous registered trademarks in this case, including the following:

- AMAN, European Union trademark No. 0953150 registered since August 24, 2007 in classes 9, 16, 39 and 41; and
- AMAN, international trademark No. 953150 registered since August 24, 2007 in classes 3, 9, 16, 36, 39, 41, 43 and 44 and covering various countries such as the United States of America ('USA'), where the protection is limited to goods and services in classes 9, 16, 39 and 41.

FACTUAL BACKGROUND

The Complainant, Aman Group Sarl, is a multinational luxury hotel group providing various services in the hospitality industry such as accommodation at luxury resorts, wellness, dining and skincare. The Complainant was founded in 1988 and operates in around 32 resorts, hotels, and private residences in 20 countries around the world. Among others, the Complainant owns three hotels/residences in the USA.

The Complainant is the owner of various registered marks corresponding to or comprising the term "AMAN" in several

classes in numerous countries all over the world. The Complainant also owns domain names comprising the same term, such as <aman.com> registered since 1997.

The disputed domain names <amancreditcard.com> and <amangiftcard.com> were both registered on December 22, 2021. Both disputed domain names appear to be inactive.

On January 13, 2022, the Complainant sent a cease and desist letter to the email address listed in the whois records associated with the disputed domain names. Apparently, the Complainant did not receive any reply to this letter.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain names to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain names. According to the Complainant, the Respondent is not commonly known by the disputed domain names and does not have interest over the disputed domain names. Also, according to the Complainant, the Respondent does not use the disputed domain names in connection with any legitimate use. Finally, the Complainant considers that the disputed domain names were registered and are being used in bad faith. The Complainant contends that the Respondent must have known that the registration of the disputed domain names was unauthorized and improper, and that the Respondent registered the disputed domain names in bad faith by intentionally adopting the Complainant's widely known marks in violation of the Complainant's rights. The Complainant further contends that the passive holding of the disputed domain names constitutes use in bad faith because of the lack of legitimate use and the clear reference to the Complainant's trademark. According to the Complainant, inference of bad faith registration and use of the disputed domain names is also given by the fact that the Respondent did not reply to the Complainant's cease & desist letter, despite ample opportunity to do so.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the disputed domain names; and
3. The disputed domain names have been registered and are being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity or confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are AMAN trademarks in which it has rights. The Complainant's AMAN trademark has been registered and used in connection to the Complainant's hospitality business.

The disputed domain names <amancreditcard.com> and <amangiftcard.com> incorporate the Complainant's AMAN trademark in its entirety, merely adding the generic terms "credit card" and "gift card" respectively. Where the relevant trademark is recognizable within the disputed domain names, the addition of other (descriptive) terms would not prevent a finding of confusing similarity under the first element (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")).

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain names are confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain names in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain names and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Mazen Muhtaseb". There are no indications that a connection between the Complainant and the Respondent existed.

Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term,

such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). In this case, the disputed domain names incorporate the Complainant's AMAN trademark in its entirety, merely adding the generic terms "credit card" and "gift card" respectively. In the Panel's view, both generic terms can be easily linked to the Complainant's hospitality business as payment options for the Complainant's services. The Complainant also shows that gift cards can be purchased on its official website. Therefore, the Panel finds that the disputed domain names carry a risk of implied affiliation with the Complainant and cannot constitute fair use.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain names. In fact, the Respondent is not making any use of the disputed domain names in connection with an active website.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain names. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

The Complainant must prove on the balance of probabilities that the disputed domain names were registered in bad faith and are being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. *Telstra Corporation Limited v. Nuclear Marshmallow*, WIPO Case No. D2000-0003; *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. D2011-2209; *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. D2001-1070).

In the instant case, the Panel finds it inconceivable that the Respondent was not aware of the Complainant's rights at the moment it registered the disputed domain names. The Complainant's AMAN mark has been registered in various countries more than a decade before the registration of the disputed domain names, including in the USA where the Respondent is located. The disputed domain names incorporate the Complainant's widely used mark in its entirety and only add generic words which can be linked to the Complainant's business.

The Panel observes that the disputed domain names are both inactive. The passive holding of a domain name may amount to bad faith when it is difficult to imagine any plausible future active use of a domain name by the respondent that would be legitimate and would not interfere with the complainant's well-known mark (see *Inter-IKEA v. Polanski*, WIPO Case No. D2000-1614; *Inter-IKEA Systems B.V. v. Hoon Huh*, WIPO Case No. D2000-0438; *Telstra Corporation Limited v. Nuclear Marshmallows*, supra). Additional factors to support a finding of bad faith in relation to the passive holding of a domain name include the degree of distinctiveness or reputation of the complainant's mark, and the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use (see section 3.3 of WIPO Overview 3.0).

In the present case, the Panel is of the opinion that the nature of the disputed domain names, combined with the fact that the Complainant's AMAN trademark is widely used, makes it difficult to conceive any plausible legitimate future use of the disputed domain names by the Respondent.

Moreover, the Complainant provides evidence showing that the email function of the disputed domain names was enabled. In the circumstances of this case, the Panel finds that the use of the disputed domain names for fraudulent activity cannot be excluded, e.g. by profiting of the likelihood of confusion with the Complainant's trademark for phishing activities through the sending of emails. The Panel also notes that the Respondent did not respond to the Complainant's cease-and-desist

letter. Therefore, the Panel considers that the inference of bad faith is strengthened, in light of the cumulative circumstances indicating bad faith.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain names were registered and are 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. **AMANCREDITCARD.COM**: Transferred
2. **AMANGIFTCARD.COM**: Transferred

PANELLISTS

Name	Flip Petillion
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DATE OF PANEL DECISION 2022-03-03

Publish the Decision
