

Decision for dispute CAC-UDRP-104937

Case number CAC-UDRP-104937

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Domain names amundiforum.com

Case administrator

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

Complainant

Organization AMUNDI ASSET MANAGEMENT

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name timmy jay

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <amundiforum.com> (“the disputed domain name”).

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- International trade mark registration no. 1024160, registered on 24 September 2009, for the word mark AMUNDI, in class 36 of the Nice Classification.

(Hereinafter, “the Complainant’s trade mark”; “the Complainant’s trade mark AMUNDI”; or “the trade mark AMUNDI” interchangeably).

At the time of writing, the disputed domain name does not resolve to an active website (“the Respondent’s website”).

FACTUAL BACKGROUND

A. Background History

The Complainant is Europe’s leading asset manager and ranks 10th worldwide, with operations from offices in Europe, Asia-Pacific, Middle East and Americas, and over 100 million retail, institutional and corporate clients.

In addition to the trade mark mentioned in the section "Identification of Rights" above, the Complainant informs that it is the owner of domain names which contain the term "AMUNDI", most notably <amundi.com>, which was registered on 26 August 2004. The Complainant's official website is www.amundi.com ("the Complainant's website").

By way of relief, the Complainant seeks the transfer of the disputed domain name <amundiforum.com> to the Complainant on the grounds advanced in section B below.

B. Legal Grounds

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

The Complainant submits that the disputed domain name <amundiforum.com> incorporates the Complainant's trade mark AMUNDI in its entirety; that the additional term "forum" is insufficient to prevent a finding of confusing similarity with the Complainant's trade mark AMUNDI; and that the Top-Level Domain <.com> ("TLD") is viewed as a standard registration requirement and, as such, should be disregarded in determining identity or confusing similarity.

The Complainant further asserts that its rights over the term "AMUNDI" have been recognised by previous UDRP panels, e.g. AMUNDI ASSET MANAGEMENT v. Domain Management, CAC Case No. 104650 (domain name <amundiimmobilier.com>; Amundi Asset Management v. Laurent Guerson, WIPO Case No. D2022-0730 (domain name <amundi-europe.com>); and Amundi Asset Management v. Jean René, WIPO Case No. D2019-1950, (domain name <amundi-invest.com>).

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant's trade mark AMUNDI. Moreover, the Respondent is not known by the disputed domain name.

The Complainant avers that the disputed domain name, which was registered on 12 October 2022, resolves to a website with which the Respondent attempts to impersonate the Complainant. The Respondent's website contains the Complainant's both logo and trade mark AMUNDI, as well as Complainant's background information obtained from the Complainant's own website. The Complainant argues that the Respondent's website is likely to confuse Internet users and to lead them to believe that there is a link or connection with the Complainant's offering. The Complainant therefore claims that the Respondent's behaviour demonstrates neither a bona fide offering of goods nor a legitimate interest of the Respondent.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant states that, given the distinctiveness of the Complainant's trade mark and reputation, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark AMUNDI.

The Complainant further states that, in registering and using the disputed domain name, which incorporates the Complainant's trade mark AMUNDI with the adjacent word "forum", the Respondent is seeking to impersonate the Complainant.

The Complainant contends that the Respondent has therefore intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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 in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

The UDRP threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to obtain the ownership of the disputed domain name:

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

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities, which lays down the foundations for panels to determine each of the three UDRP Policy grounds.

I. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in "AMUNDI" since 2009.

The disputed domain name is <amundiforum.com>, and the Complainant's trade mark is AMUNDI.

The Panel has no difficulty in finding that the disputed domain name is confusingly similar to the Complainant's trade mark AMUNDI, in accordance with paragraph 4(a)(i) of the UDRP Policy.

The adjacent word "forum" in the disputed domain name string has no material impact on the confusing similarity assessment nor does the TLD <.com>, such that the disputed domain name clearly evokes the Complainant's trade mark AMUNDI.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

II. Rights or Legitimate Interests

The Respondent has defaulted in these UDRP proceedings. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Complainant firmly denies any affiliation and/or association with, or authorisation/endorsement/sponsorship for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Panel also notes that the Complainant claims not to have authorised the Respondent to use the Complainant's trade mark AMUNDI nor to commercialise the Complainant's goods and services on the Respondent's website. On this particular point, the Panel refers to paragraph 2.8 of the WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 3.1.4 ("WIPO Jurisprudential Overview 3.0"), according to which resellers, distributors or service providers using a domain name containing a complainant's trade mark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services, and thus have a legitimate interest in such domain name. UDRP panels have termed this as the "Oki Data test" (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903), which comprises the following four cumulative requirements:

1. The respondent must actually be offering the goods or services at issue;
2. The respondent must use the site to sell only the trade marked goods or services;
3. The website must accurately and prominently disclose the registrant's relationship with a trade mark holder; and
4. The respondent must not try to "corner the market" in domain names that reflect the trademark.

Upon review of the available record, the Panel notes that the Respondent would have failed the Oki Data test under items 3 above, as the Panel was unable to locate any disclaimer regarding the relationship between the Respondent and the Complainant.

The Panel is furthermore unconvinced that, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent has submitted no evidence to refute the Complainant's claims. Instead, there is robust evidence on the available record suggesting that the Respondent has attempted to impersonate the Complainant, as discussed under item III. below.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

III. Registered and Used in Bad Faith

Registration

The following elements are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been using the trade mark AMUNDI since at least 2009 and has been operating its activities earlier, through the domain name <amundi.com> (registered in 2004), whereas the disputed domain name <amundiforum.com> was registered in 2022;
- UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business; and
- The Respondent's lack of participation in the course of the UDRP proceedings.

Use

The Complainant refers to the Respondent as being engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

"(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location."

As mentioned earlier, at the time of writing, the disputed domain name does not resolve to an active website. Nevertheless, the Panel has considered the available record and found compelling indicia that the Respondent would have attempted to offer the Complainant's goods and services through the Respondent's website, in an unauthorised manner, and absent any disclosure as to the relationship between the Respondent and the Complainant. The Panel considers that the Respondent would have attempted to impersonate the Complainant through the use of the trade mark AMUNDI and background information related to the Complainant on the Respondent's website. The Respondent's behaviour would therefore fall into the remit of circumstance (iv) of paragraph 4(b) of the UDRP Policy.

For the sake of completeness, the Panel also takes stock of paragraph 3.3 of the WIPO Jurisprudential Overview 3.0, according to which UDRP panels have recognised various types of evidence to support a finding of bad faith on the basis of the non-use of a domain name. In the case at hand, the Panel takes the view that the following factors would sway in favour of the Complainant in the circumstances (i) the degree of distinctiveness or reputation of the Complainant's trade mark; (ii) the Respondent's default; and (iii) the implausibility of any good faith use to which the disputed domain name may be put.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **amundiforum.com**: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION	2022-11-25
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Publish the Decision
