

Decision for dispute CAC-UDRP-105488

Case number CAC-UDRP-105488

Time of filing 2023-05-30 08:40:29

Domain names amundifund.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization AMUNDI ASSET MANAGEMENT

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name bill lerm

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 the following trademark, which has been registered with European Union Intellectual Property Office:

- International Trademark Registration No. 1024160 for AMUNDI, registered on September 24, 2009.

FACTUAL BACKGROUND

The Complainant, Amundi Asset Management, is one of Europe's top leading asset management companies. It has offices in Europe, Asia-Pacific, the Middle East and the Americas. It has a significant number of retail, institutional and corporate clients.

The Complainant states that it owns multiple domain names, consisting, inter alia, the AMUNDI mark, such as <amundi.com> which was used as the Complainant's main website since August 26, 2004 and <amundi-funds.com> which was registered and used since September 16, 2009.

The disputed domain name was registered by the Respondent on May 24, 2023 and resolves to a website displaying a general offer to sell the domain name.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

Complainant:

The Complainant contends that the disputed domain name is confusingly similar to the AMUNDI mark on the basis that the fact that the disputed domain name consists of the AMUNDI mark in its entirety with the addition of the descriptive term “fund” and the top-level domain name suffixes (“TLD”) “.com” is insufficient to avoid the finding that the disputed domain name is confusingly similar to its AMUNDI mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not acquired any rights in a trademark or trade name corresponding to the disputed domain name. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the AMUNDI mark.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent knew of the Complainant’s AMUNDI mark at the time of registration of the disputed domain name and registered the domain with the intent to target the trademark. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant and its mark.

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark registration of the AMUNDI mark.

The differences between the disputed domain name and the Complainant’s AMUNDI mark are the addition of the term “fund” and the TLD “.com” which are insufficient to avoid confusing similarity with the Complainant’s trademark.

It is established that where a trademark is recognizable within the disputed domain name, the addition of a descriptive term would not prevent a finding of confusing similarity under the first element. (See WIPO Overview 3.0, section 1.8). It is further established that TLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity

test. (See WIPO Overview 3.0, section 1.11).

Further, in this case, the addition of the descriptive term “fund” is related to and descriptive of the Complainant’s business activities which increases the likelihood of confusion.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the AMUNDI mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the AMUNDI mark (see OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735). The Complainant also submitted evidence that its registrations and use of the trademark predates the registration of the disputed domain name by more than 13 years.

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant’s prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its AMUNDI trademark. Given that the Complainant’s trademark has been registered for a long time, it is highly unlikely that the Respondent did not know of the Complainant and its mark prior to the registration of the disputed domain name. The disputed domain name incorporates the Complainant’s mark in its entirety with the additional term “fund” which given the circumstances of this case, the Panel finds is targeting the Complainant and its mark.

The Complainant also submitted evidence that the disputed domain name resolved to a webpage which displays an offer to sell the domain name. While, generally, registering a domain name for subsequent resale (including for a profit) would not by itself support a claim that the respondent registered the domain name in bad faith with the primary purpose of selling it to a trademark owner (or its competitor), in the present case, the incorporation into the disputed domain name of the Complainant’s distinctive mark together with the word “fund”, which is a word in the Complainant’s field of endeavour, is clear indication of bad faith registration and use by the Respondent. The evidence shows that the Respondent was set out profit from the Complainant’s goodwill in its trademark.

The Respondent also failed to respond to the Complaint which is an additional indication of bad faith registration and use of the disputed domain name by the Respondent.

Based on the circumstances of the particular case, it is the Panel’s view that it is unlikely that the Respondent registered the disputed domain name without sight and knowledge of the Complainant’s mark, and it is implausible that there is any good faith use to which the disputed domain name may be put to. It is clear to the Panel that the Respondent specifically targeted the Complainant and its mark and registered the disputed domain name to divert Internet traffic and benefit commercially from the Complainant’s goodwill in its mark by offering it for sale to the Complainant or to a competitor of the Complainant for valuable consideration in excess of the documented out-of-pocket costs directly relating to the domain name.

Based on the evidence the Panel draws the inference that the disputed domain name was 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. amundifund.com: Transferred

PANELLISTS

Name Jonathan Agmon

DATE OF PANEL DECISION 2023-07-05

Publish the Decision
