Decision for dispute CAC-UDRP-105591

Case number	CAC-UDRP-105591
Time of filing	2023-07-03 09:02:51
Domain names	amundietf.info

Case administrator

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

Complainant

Organization	AMUNDI ASSET MANAGEMENT

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Didier Bommier

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 international trademark n°1024160 AMUNDI® registered since September 24, 2009.

FACTUAL BACKGROUND

The disputed domain name <amundietf.info> was registered on June 7, 2023 and is inactive.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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). The Panel agrees that the addition of ETF does not create any material difference, since Complainant is in the business of selling ETF products. Therefore, the Complainant must prevail on this element.

However, the Panel disagrees with Complainant's contention that: "It is also well established that the TLD is viewed as a standard registration requirement and as such is disregarded. Please see NAF Case No. FA 153545, Gardline Surveys Ltd v. Domain Finance Ltd." The Panel notes that case was decided twenty years ago, before the introduction of any of the new gTLDs, including .info. The TLD can provide important context in some cases, including this one. See also, e.g., Staedtler Mars GmbH & Co. KG v. Maryna Kobielieva, WIPO Case No. D2015-0050 (finding no bad faith in registration of FIMO.club).

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). As in the FIMO.club case cited above, the Complainant makes out a prima facie case stating sufficient allegations that the Respondent has no legitimate interest. Unlike in that case, in this case the Respondent has not appeared to contest Complainant's allegations. Therefore, the Complainant must prevail on this element.

BAD FAITH

The Complainant has not, 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). The domain name was registered just 21 days before the complaint was filed, and apparently has not been active since. Complainant provides no evidence of any use of the domain name, and so has not proved to the satisfaction of the Panel that the domain name has been either registered or used in bad faith.

As in the FIMO.club case cited above, the Panel notes that "passive holding by itself does not invariably amount to bad faith use but must be seen in the light of the individual circumstances of each case." And while there was no response in this case, it still appears to the Panel that "the facts of this case might allow for an active use of the disputed domain name by the Respondent in good faith." It appears just as likely that this domain was registered in good faith to provide information about Complainant's ETF products, as that it was registered in bad faith for any nefarious purpose. The Policy does not allow bare speculation as proof of bad faith, there must be something more than satisfaction of the other two elements of the Policy.

Domain registrants should typically be allowed more than three weeks to put a domain name to active use, unless there are other factors pointing to bad faith intent. Such factors could include the nature of the domain name, for example amundi-login.com would inherently be likely to be used for criminal activity. Or there could be a history of cybersquatting by the respondent. But this Complainant points to nothing other than the domain name's similarity to the Amundi trademark, and the fact that Respondent has not appeared to contest Complainant's allegations. That is insufficient to prove bad faith under the Policy.

The cases that Complainant cites in support are distinguishable. In the famous Telstra decision, the panel held "it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the domain name <telstra.org>." Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003. But in this case, it is entirely plausible to conceive that this Respondent could legitimately use the <amundietf.info> domain name to provide information about Complainant's ETF products. As the domain name was registered just three weeks before the complaint was filed, the Respondent did not have any obligation to make any use of the domain name so quickly. In the other famous case cited by Complainant, "respondent admits it was his practice to register second level domains that corresponded to the trademarks of others." CBS Broadcasting, Inc. v. Dennis Toeppen, WIPO Case No. D2000-0400 ("Toeppen was in the business of registering domain names for the purpose of selling the domain name to the owners of the trademarks."). No such facts are present here. Therefore, Complainant fails to persuasively argue, much less prove with any evidence, that the <amundietf.info> domain name has been registered or used in bad faith under the Policy.

As such, the Complaint fails, and the domain name shall remain with Respondent. Of course, this decision is without prejudice to Complainant's right to bring a future action under the Policy, in the event the domain name is used in bad faith. See, e.g., Staedtler Mars GmbH & Co. KG v. Maryna Kobielieva, WIPO Case No. D2015-0050 ("Should the Respondent in the future use the disputed domain name in bad faith, the Complainant may file a complaint on the basis of new circumstances at such time.").

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

Complainant fails to persuasively argue, much less prove with any evidence, that the <amundietf.info> domain name has been registered or used in bad faith under the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **amundietf.info**: Remaining with the Respondent

PANELLISTS

Name	**Mike Rodenbaugh**

DATE OF PANEL DECISION 2023-08-06

Publish the Decision