

Decision for dispute CAC-UDRP-104960

Case number	CAC-UDRP-104960
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Time of filing	2022-11-01 09:09:37
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Domain names	amundiesg.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	AMUNDI ASSET MANAGEMENT
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	lok lok
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademark registration:

- International word mark No. 1024160 “AMUNDI” registered on September 24, 2009, covering services in Class 36.

The Complainant proved its ownership of the given trademark registration by the submitted extract from the Register.

FACTUAL BACKGROUND

The Complainant is the largest Europe’s asset manager, having offices in Europe, Asia-Pacific, the Middle East and the Americas. With over 100 million retail, institutional and corporate clients, the Complainant ranks in top 10 globally.

Moreover, the Complainant is also the owner of several domain names including “AMUNDI” trademark, such as, the domain name <amundi.com>, registered and used since August 26, 2004.

The disputed domain name <amundiesg.com> (hereinafter “disputed domain name”) was registered on October 7, 2022 and resolves to a parking page.

According to the Registrar verification, the Respondent is 'lok'. The Respondent's provided address as being at Honk Kong.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name fully incorporates the Complainant's trademark and so it is confusingly similar to the Complainant's trademark. The addition of acronym "ESG" (which stands for "environmental, social and governance") is not sufficient to escape the finding that the domain name is confusingly similar to the Complainant's trademark. It does not change the overall impression of the designation as being connected to the Complainant's trademark "AMUNDI". The Complainant states that it is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP" (WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasilii Terkin).

Furthermore, the Complainant contends that the addition of the gTLD ".com" does not change the overall impression of the designation as being connected to the Complainant's trademark. The Complainant states that it is well-established that the TLD is viewed as a standard registration requirement and as such disregarded. (Forum Case No. FA 153545, Gardline Surveys Ltd v. Domain Finance Ltd.).

The Complainant adds that its rights over the term "AMUNDI" have been confirmed by previous panels:

- CAC Case No. 104650, AMUNDI ASSET MANAGEMENT v. Domain Management <amundiimmobilier.com>;
- WIPO Case No. D2022-0730, Amundi Asset Management v. Laurent Guerson <amundi-europe.com>;
- WIPO Case No. D2019-1950, Amundi Asset Management v. Jean René <amundi-invest.com>.

1. The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant asserts that the Respondent is not known as the disputed domain name. The Complainant adds that past panel have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name (Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>; Forum Case No. FA 699652, The Braun Corporation v. Wayne Loney).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the Respondent is not related in any way to the Complainant's business. The Complainant also alleges that the Respondent is not affiliated with nor authorized by the Complainant in any way to use the Complainant's trademark. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Finally, the Complainant points out that the disputed domain name resolves to a parking page with commercial links. The Complainant adds that past panels have found that it is not bona fide offering of goods or services or legitimate non-commercial or fair use at a confusingly similar domain name (Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend; WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe).

1. The Complainant contends that the domain name has been registered and is being used in bad faith.

The Complainant states that the disputed domain name is confusingly similar to its trademark and domain names associated. The Complainant contends that its trademark is well-known (CAC case No. 101803, AMUNDI v. John Crawford). The Complainant adds that the addition of the acronym "ESG" cannot be coincidental, as ESG commitments are integrated in the Complainant's strategy.

Therefore, the Complainant contends that the Respondent has registered the domain name with full knowledge of the Complainant's trademark (WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc).

Furthermore, the Complainant asserts that the disputed domain name resolves to a parking page with commercial links. By that the Respondent has attempted to attract Internet users for commercial gain to his own website, which is supposed to be evidence of bad faith (WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC).

RESPONDENT:

No administratively Complaint 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 UDRP).

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).

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).

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

1. CONFUSING SIMILARITY

The Panel finds that the disputed domain is confusingly similar to the Complainant's "AMUNDI" trademark.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter "The WIPO Overview 3.0") in Paragraph 1.7 states: "[...] in cases where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The WIPO Overview 3.0 in Paragraph 1.8 states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin, the panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the Panel stated that: "It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar".

The Complainant has established that owns trademark registration consisting of the verbal element "AMUNDI" protected for services in Class 36, especially property management.

The Complainant's trademark is incorporated in its entirety and clearly recognizable in the disputed domain <amundiesg.com>. The addition of acronym "ESG" (which in general meaning stands for "environmental, social and governance") does not change the overall impression of the disputed domain name. The addition of the gTLD <.com> does not change the overall impression of the disputed domain name either.

As stated in the WIPO Overview 3.0 in Paragraphs 1.7 and 1.8 where a domain name incorporates the entirety of a trademark, the domain will normally be considered confusingly similar.

Therefore, the disputed domain name <amundiesg.com> as it reproduces "AMUNDI" trademark in its entirety, with the addition of the acronym "ESG" is considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

1. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate

interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (see CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman).

Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the UDRP, once the complainant has made something credible (*prima facie* evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing particular evidence.

In the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., the panel stated: "Complainant must make at least a *prima facie* showing that Respondent has no rights or legitimate interests in the mark. After Complainant has met its initial burden of proof, if Respondent fails to submit a response Complainant will be deemed to have satisfied Paragraph 4 (a) ii of the Policy."

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the Panel stated that "[i]n the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its *prima facie* case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy."

In the Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group, the panel stated that: "where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain name".

In the present case, the Complainant states that the Respondent is not known by the disputed domain name. The Complainant also contends that the Respondent is not affiliated with nor authorized by the Complainant in any way and so the Respondent does not have any rights or legitimate interests in respect of the disputed domain name.

Furthermore, the disputed domain resolves to the parking page with commercial links. Past panels have held that such a use of a confusingly similar domain does not represent a legitimate interest (see Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend; WIPO Case No. D2007-1695).

To the satisfaction of the Panel the Complainant has shown a *prima facie* case that the Respondent has no rights to the Complainant's trademarks nor the disputed domain name.

The Respondent did not reply to the Complaint and so failed to demonstrate its rights or legitimate interests in the disputed domain.

Moreover, the Respondent is not clearly identifiable from the Whois database, which was proven by the Complainant. For this reason, this Panel states that the Respondent is not commonly known by the disputed domain name.

Therefore, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the UDRP.

1. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar [...] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the panel stated: "when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted."

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the panel stated that: "In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use."

In the given case, the Complainant owns trademark registration consisting of the term "AMUNDI". Moreover, the Complainant has proven certain reputation in the area of assets management globally. Past panels declared that the Complainant's trademark is well-known (see CAC Case No. 101803, AMUNDI S.A. v. John Crawford; CAC Case No. 103916, AMUNDI ASSET MANAGEMENT v. rudy).

Therefore, this Panel assumes that the Respondent must have been aware of the Complainant's trademarks and their reputation before the registration of the disputed domain on October 7, 2022.

To the satisfaction of this Panel, it is established that the Respondent registered the disputed domain name which incorporates the entirety of the Complainant's trademark, which is widely known. Additionally, the Respondent is not recognized under the disputed domain name and cannot be identified from the Whois database (proven by the Annex). Therefore, the disputed domain name was registered by an unknown and unaffiliated entity.

Furthermore, the disputed domain resolves to parking page with commercial links (evidenced by the Annex). By that, the Respondent is

passively holding the disputed domain name. In addition to that, the Respondent is using confusingly similar domain name for his own commercial gain. In the view of this Panel, this form of using represents bad faith.

Following the above mentioned, the Panel finds that the Complainant has satisfied Paragraph 4(a)(iii) of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **amundiesg.com**: Transferred

PANELLISTS

Name	Radim Charvát
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DATE OF PANEL DECISION 2022-12-01

Publish the Decision