

## **ADMINISTRATIVE PANEL DECISION**

**ANIMA CORP v. Whois Privacy, Private by Design, LLC / Hang Qian**  
**Case No. D2022-2568**

### **1. The Parties**

The Complainant is ANIMA CORP, France, represented by Coblence Avocats, France.

The Respondent is Whois Privacy, Private by Design, LLC, United States of America (“U.S.”) / Hang Qian, China.

### **2. The Domain Name and Registrar**

The disputed domain name <aminamuaddishoe.store> is registered with Porkbun LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 14, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on July 14, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on July 20, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on July 21, 2022.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 16, 2022.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on August 18, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a French company specialized in the worldwide sale of shoes and accessories (leather goods, jewelry etc.) for women under the brand AMINA MUADDI available in particular on the website “www.aminamuaddi.com”. It results from the Complainant’s undisputed contentions that it has 1,3 million followers on its Instagram account for @aminamuaddi and another 593.000 followers for @aminamuaddiofficial.

The Complainant holds trademark registrations for the word mark AMINA MUADDI in various jurisdictions, such as International Trademark Registration No. 1371021 designating amongst others, China where the Respondent is reportedly located, and registered with priority of a French Basis Registration of June 29, 2017 for goods in classes 03, 09, 14, 18, 25 and services in class 35.

The disputed domain name was registered on June 29, 2022. The language of the Registration Agreement is English.

It further results from the Complainant’s undisputed allegations, that - at the time the complaint was filed – the disputed domain name resolved to an error page. At the time of drafting of this Decision, the disputed domain name resolves to a website displaying goods for sale at highly discounted prices under the brand AMINA MUADDI.

Finally, the Complainant provided evidence that it sent a formal notice to the hosting provider of the disputed domain name on July 12, 2022, without, however, achieving the disputed domain name to be suspended.

#### **5. Parties’ Contentions**

##### **A. Complainant**

Firstly, the Complainant points out that the disputed domain name is confusingly similar to its registered trademark AMINA MUADDI since it fully incorporates said trademark. The only difference is in the addition of a space between both terms, the addition of the descriptive term “shoe” and the Top-Level Domain (“TLD”) “.store” that does not distinguish the Complainant’s mark.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent is neither a licensee nor a third party authorized by the Complainant to use the trademarks as domain names. Moreover, the reproduction of the Complainant’s trademarks reveals a malicious intention to take advantage of the notoriety of the said trademarks. In addition, such use has never been authorized by the Complainant and therefore cannot be the basis for *bona fide* use of a domain name. Finally, the Complainant submits, that the Respondent has not made a legitimate, non-commercial or fair use of the disputed domain name because the Respondent is only attempting to create confusion in the public mind.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. In the Complainant’s view it is clear that the disputed domain name was registered in bad faith. Bad faith can be established if the Respondent “knew or should have known” of the Complainant’s trademark rights and nevertheless registered a domain name for which it had no right or legitimate interest. In the present case, the Respondent could not have been unaware of the Complainant’s prior rights when it registered the disputed domain name. Furthermore, passive holding of the disputed domain name

constitutes bad faith, taking into consideration the overall context of the Respondent's behavior as set forth in this Complaint.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### **A. Identical or Confusingly Similar**

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

The Complainant is the owner of several trademark registrations consisting of the verbal element AMINA MUADDI, e.g., International Trademark Registration No. 1371021 designating amongst others China where the Respondent is located and registered with priority of a French Basis Registration of June 29, 2017.

The Panel notes that the Complainant's registered trademark AMINA MUADDI is fully included in the disputed domain name. The Panel further notes that the two terms constituting the trademark are written together, without any space and that the term "shoe" is added at the end of the trademark. It is the view of this Panel that the combination of the trademark AMINA MUADDI written without any space and combined with the term "shoe" placed after the mark does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademarks. In fact, in accordance with the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element.

Adding the TLD ".store", which is a technical requirement, is generally disregarded for the purpose of the analysis of confusing similarity.

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

## **B. Rights or Legitimate Interests**

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name. In the Panel's view, based on the unrebutted allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the evidence submitted with the Complaint, no content was displayed on the website to which the disputed domain name resolved. Such use can neither be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name in the sense of paragraph 4(c)(i) and (iii) of the Policy (see, e.g. *AXA SA v. Rie, AIBI*, WIPO Case No. [D2022-1287](#)).

As mentioned under section 4 above, the Panel notes that at the time of drafting of this Decision, the disputed domain name resolves to a website displaying goods for sale at highly discounted prices under the brand AMINA MUADDI. The Panel notes that the website appears to have been activated after the filing of the Complaint, and that there is no evidence that the Respondent has been authorized by the Complainant to use the AMINA MUADDI mark. Nor is there any information on the Respondent's website to indicate the relationship between the Complainant and the Respondent (or rather the lack thereof).

In addition, the Respondent's concealment of its identity behind a privacy service is also taken in consideration, and this Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take advantage of the Complainant's registered trademark AMINA MUADDI by registering a domain name containing that trademark with the intent to attract Internet users for commercial gain.

Finally, the Panel does not dispose of any elements that could lead the Panel to the conclusion that the Respondent is commonly known by the disputed domain name or that it has acquired trademark rights pursuant to paragraph 4(c)(ii) of the Policy.

It is acknowledged that once the Panel finds such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence in this regard, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

## **C. Registered and Used in Bad Faith**

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the Complainant's undisputed allegations, the Respondent did not actively use the disputed domain name at the time the Complaint was filed. With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, prior UDRP panels have found that the apparent lack of active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith under the doctrine of passive holding (see e.g. *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1531](#)). The Panel must therefore examine all the

circumstances of the case to determine whether the Respondent is acting in bad faith. Factors that have been considered relevant in applying the passive holding doctrine include:

- (i) the degree of distinctiveness or reputation of the complainant's mark;
- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use;
- (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and
- (iv) the implausibility of any good faith use to which the domain name may be put (see [WIPO Overview 3.0](#), section 3.3).

In the case at hand, the Panel considers the following circumstances surrounding the registration as suggesting that the Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith:

- (i) the intrinsic distinctiveness of the trademark AMINA MUADDI;
- (ii) the Respondent's failure to respond to this Complaint combined with the fact that also the Complainant's communication to the Registrant did not lead to a suspension of the disputed domain name;
- (iii) the fact that the Respondent hides its identity behind a privacy shield; and
- (iv) the fact that the disputed domain name currently resolves to a website displaying goods for sale at highly discounted prices under the brand AMINA MUADDI (suggesting that the offered products may be counterfeit products).

In addition, due to these circumstances this Panel concludes that the Respondent knew or should have known the trademark AMINA MUADDI when it registered the disputed domain name.

In the light of the above, and in the absence of any explanations by the Respondent, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has therefore also satisfied the third element, paragraph 4(a)(iii) of the Policy.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <aminamuaddishoe.store> be transferred to the Complainant.

*/Tobias Malte Müller/*

**Tobias Malte Müller**

Sole Panelist

Date: September 1, 2022