

ADMINISTRATIVE PANEL DECISION

Amundi Asset Management v. Dia Minh, NIL
Case No. D2023-5291

1. The Parties

The Complainant is Amundi Asset Management, France, represented by Nameshield, France.

The Respondent is Dia Minh, NIL, United States of America.

2. The Domain Name and Registrar

The disputed domain name <amondi-teknologi.com> is registered with Gname.com Pte. Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 20, 2023. On December 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 2023, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 22, 2023, 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 amended Complaint on December 22, 2023.

The Center verified that the Complaint together with the amended 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 December 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 17, 2024.

The Center appointed Antony Gold as the sole panelist in this matter on January 22, 2024. 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 substantial asset manager with offices in Europe, Asia-Pacific, the Middle East and the Americas. It has over 100 million retail, institutional, and corporate clients and EUR 1,179.3 billion of assets under management.

The Complainant's principal brand is AMUNDI and the Complainant is the owner of International Trade Mark, registration number 1024160 for AMUNDI in class 36, registered on September 24, 2009. The Complainant also owns and operates the domain names <amundi.com> and <amunditechnology.com>, which resolve to websites providing information about its services.

The disputed domain name was registered on November 28, 2023. It has previously directed Internet users to a website featuring the Complainant's "Amundi Technology" logo and containing content, written in the Indonesian language, purportedly promoting an investment platform of the Complainant which is also publicized on the Complainant's website at the domain name <amunditechnology.com>. The disputed domain name is presently inactive.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that;

- the disputed domain name is confusingly similar to a trade mark in which it has rights. The first element of the disputed domain name comprises an obvious misspelling of the Complainant's AMUNDI mark, with a substitution of the letter "o" for the "u" in the mark. The additional term "teknologi", which means "technology" in Indonesian, does not change the overall impression of the disputed domain name as being connected with the Complainant's mark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, the Respondent is not commonly known by the disputed domain name, nor is it affiliated or authorized by the Complainant to make use of the Complainant's mark or to apply for registration of the disputed domain name. Moreover, use of the disputed domain name to resolve to a webpage copying the Complainant's official website does not comprise a *bona fide* offer of services or a legitimate use of the disputed domain name;
- the disputed domain name was registered and is being used in bad faith. Given the distinctiveness and reputation of the Complainant's mark, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark, constituting opportunistic bad faith. By its use of the disputed domain name the Respondent has intentionally attempted to attract, for commercial purposes, Internet users to its website by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship or endorsement of its website and it is thereby using it in bad faith.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in respect of the disputed domain name in order to succeed in its Complaint: (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and (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

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name; see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of its AMUNDI trade mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in the case of the disputed domain name, is usually disregarded when assessing confusing similarity. Save that the "u" in AMUNDI has been replaced by an "o", the Complainant's AMUNDI mark is reproduced within the disputed domain name and is recognizable within it. See also section 1.9 of the [WIPO Overview 3.0](#): "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element". In this respect, the addition to "amondi" of a hyphen followed by the term "teknologi" does not prevent the disputed domain name from being found confusingly similar to the Complainant's mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances by which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. Whilst the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, the complainant is deemed to have satisfied the second element; see the [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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; see paragraph 4(c)(i) of the Policy, and the [WIPO Overview 3.0](#), section 2.2. Previous UDRP panels have held that the use of a domain name for illegal activity, including phishing, distributing malware or impersonation/passing off (which would include the Respondent's initial use of the disputed domain name, as described above) can never confer rights or legitimate interests on a respondent; see section 2.13.1 of the [WIPO Overview 3.0](#) and, by way of example, *Zions Bancorporation, N.A. v. George Gillespie*, WIPO Case No. [D2022-3197](#). The Panel also takes into account the fact that the Respondent has chosen not to challenge the Complainant's assertion that it has used the disputed domain name for dishonest purposes. So far as the present, inactive status of the disputed domain name is concerned, non-use of the disputed domain name, self-evidently, does not comprise use of it in connection with a *bona fide* offering of goods or services;
- there is no evidence in the record that the Respondent has been commonly known by the disputed domain name. In this respect, see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

For the above reasons, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Complainant has established that, within a very short period after registration of the disputed domain name, it resolved to a website which purported to be the Indonesian language version of the Complainant's website at <amunditechnology.com>. This points to the Respondent having been well aware of the Complainant and its AMUNDI-branded business as at the date of registration of the disputed domain name and to have registered it in order to take unfair advantage of the Complainant's mark. There is no obvious good faith explanation evident within the record as to why the disputed domain name was registered by the Respondent, nor has it offered one. The mere registration of a domain name that is identical or confusingly similar to a famous or widely known trade mark by an unaffiliated entity can by itself create the presumption of bad faith; see section 3.1.4 of the [WIPO Overview 3.0](#). The Panel accordingly finds the registration of the disputed domain name to have been in bad faith.

Paragraph 4(b) of the Policy establishes a list of non-exhaustive circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. However, other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. In particular, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding; see the [WIPO Overview 3.0](#), section 3.3 and by way of example, *Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#). Although panelists will look at the totality of the circumstances in each case, 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.

Applying these factors to the circumstances of these proceedings: (i) the Panel notes the distinctive character of the Complainant's AMUNDI trade mark; (ii) the Respondent has not provided a response to the Complaint nor is there any evidence of actual or contemplated good faith use of the disputed domain name;

and (iii) there is no plausible good faith use to which the disputed domain name could be put by the Respondent. In the circumstances of this case, therefore, the Respondent's passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Respondent's former use of the disputed domain name, namely to resolve to a website which masqueraded as that of the Complainant, also comprised bad faith use in that the Respondent had intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website; see paragraph 4(b)(iv) of the Policy, and the [WIPO Overview 3.0](#), section 3.1.4. See also, by way of example, *Hanai Capital, LLC v. Domain Administrator, See PrivacyGuardian.org / Nike Nolan*, WIPO Case No. [D2020-0846](#).

For the above reasons, the Panel finds the Respondent's registration and use of the disputed domain name is in bad faith.

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 <amondi-teknologi.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: January 29, 2024