

ADMINISTRATIVE PANEL DECISION

ANIMA Corp v. MOHAMMED TAHIRI

Case No. D2023-0309

1. The Parties

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

The Respondent is MOHAMMED TAHIRI, Morocco.

2. The Domain Name and Registrar

The disputed domain name <aminamuadi.store> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 24, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 25, 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 amendment to the Complaint on January 27, 2023.

On January 25 and January 27, 2023, the Respondent sent several informal emails to the Center, described below. One of which indicated its willingness to forfeit the disputed domain name. The Center transmitted those emails to the Complainant and provided the Complainant with a five-day period to request for suspension should the Parties wish to explore settlement options. No such request was received.

Accordingly, 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 February 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2023. The Respondent did not submit any formal response.

Accordingly, the Center notified the Parties on February 28, 2023, that the Center will proceed to Panel Appointment.

The Center appointed Zoltán Takács as the sole panelist in this matter on March 6, 2023. 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 sale of shoes and other fashion items for women under the luxury brand AMINA MUADDI.

The Complainant's global portfolio of trademarks consisting of the term AMINA MUADDI includes the International Trademark Registration ("IR") No. 1371021 registered since July 27, 2017, for among others footwear, handbags, jewelry and various fashion accessories.

Since March 9, 2017, the Complainant owns the domain name <aminamuaddi.com>, which links to its principal website and online shop.

The disputed domain name was created on January 12, 2023, and was used to redirect Internet users to a website purporting to promote and offer the same goods that are marketed and sold by the Complainant as well as third parties competing goods.

On the date of this decision, the disputed domain name redirects to a commercial platform called Shopify, which states *inter alia*: "Only one step left! To finish setting up your new web address, go to your domain settings, click 'Connect existing domain' and enter: aminamuadi.store".

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name incorporates its AMINA MUADDI nearly entirely, and is therefore confusingly similar to it. The only difference between the disputed domain name and the Complainant's trademark is that a letter "d" is omitted from the textual element "Muaddi" of the trademark, which constitutes typo-squatting.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant claims that the Respondent's use of the disputed domain name to redirect Internet users to a website that reproduced its trademark, name of products' collections and photographs and was purporting to sell its AMINA MUADDI branded goods is evidence of the Respondent's bad faith.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

On January 25 and 27, 2023, the Respondent transmitted the following messages to the Center:

-“I don't understand what you're saying, im just beginner. Can you explain what I should do? Thanks”

-“I don't understand anything??? Ask namecheap to remove the domain, not me”

-“I don't need this name if there's a problem with it???????”

Apart from these messages the Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made “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”.

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

- (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.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among previous UDRP panels that if the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced evidence of having registered rights in the AMINA MUADDI trademark and the Panel finds that the IR No. 1371021 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assesses whether the disputed domain name <aminamuadi.store> is identical or confusingly similar to the Complainant's AMINA MUADDI trademark.

According to section 1.7 of the [WIPO Overview 3.0](#), the standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Complainant's trademark is readily recognizable in disputed domain name, the only difference being the Respondent's omission of a letter “d” from the “Muaddi” textual element of the trademark. The Panel considers this obvious misspelling of the Complainant's trademark a clear example of typosquatting. According to 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 the purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain (“TLD”) in a domain name (in this case “.store”) is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The Panel finds that the Complainant has therefore satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

According to section 2.1 of the [WIPO Overview 3.0](#), while 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 often 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 the relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds well-established prior rights in the AMINA MUADDI trademark. The Complainant has never authorized the Respondent to use its trademark in a domain name, or otherwise.

It is clear from the Complainant’s evidence that the webpage at the disputed domain name prominently displayed the Complainant’s AMINA MUADDI trademark and used the Complainant’s product names and images without any authorization. Also, the Respondent’s notice and the trademark disclaimer displayed at the bottom of the webpage at the disputed domain name suggested that the Respondent was offering for sale other third parties’ competing products as well.

The Panel notes that even if the products offered for sale on the website to which the disputed domain name resolved were genuine products from the Complainant, the website still did not qualify as fair use. In this instance, the disputed domain name fails under the *Okidata* test for its failure to include any information as to its relationship with the Complainant, as well as for offering third parties competing goods (see *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) and section 2.8.1 of the [WIPO Overview 3.0](#)).

The Respondent failed to respond to the Complainant’s contentions, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant’s *prima facie* case.

The Panel finds, also noting the circumstances described below as regards bad faith, that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The disputed domain name that is phonetically and visually nearly identical to the Complainant’s AMINA MUADDI trademark resolved to a website using without authorization the Complainant’s trademark, its product names and images without any authorization and was offering for sale the Complainant’s and third parties’ competing products.

This, in the Panel’s view not only demonstrates the Respondent’s actual knowledge of the Complainant’s AMINA MUADDI trademark at the time of registration of the disputed domain name, but also the Respondent’s obvious intent to deceive Internet users into believing that the corresponding website at issue is in some way associated with the Complainant and its AMINA MUADDI trademark.

The Panel finds that the Respondent has intentionally attempted to attract, for commercial gain Internet users to its websites (or websites under its control) by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation or endorsement of such sites or the services advertised on such sites, within the meaning of paragraph 4(b)(iv) of the Policy.

In addition, the disputed domain name is a typosquatting registration and previous UDRP panels have found typosquatting, “the intentional misspelling of words with intent to intercept and siphon off traffic from its intended destination, by preying on Internauts who make common typing errors inherently parasitic and of itself evidence of bad faith” (see *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)).

The fact that at the time of rendering of this decision the disputed domain name did not resolve to an active website does not alter the Panel’s findings. The disputed domain name started resolving to an inactive Shopify webpage unconnected with any *bona fide* supply of goods or services by the Respondent only after previously resolving to a website which offered without any authorization the Complainant’s and third parties competing products. In addition, the Respondent failed to submit a formal response to the Complaint or provide any evidence of actual or contemplated good-faith use of the disputed domain name (see section 3.3 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that paragraph 4(a)(iii) of the Policy is satisfied.

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 <aminamuadi.store> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: March 16, 2023