

ADMINISTRATIVE PANEL DECISION

ANIMA Corp v. Gorbatova Olga
Case No. D2022-2707

1. The Parties

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

The Respondent is Gorbatova Olga, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <aminamuaddi.store> is registered with Registrar of Domain Names REG.RU LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2022. On July 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 26, 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 28, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same date, the Center sent a document to the Parties in English and in Russian in respect of the language of the proceeding. The Complainant filed an amended Complaint on July 28, 2022. On the same date, the Complainant requested that the language of the proceeding be English.

On August 4, 2022, the Complainant requested the suspension of the proceeding. On the same date, the Center suspended the proceeding until September 3, 2022. On August 30, 2022, the Complainant requested a further suspension of the proceeding. On the same date, the Center suspended the proceeding until October 3, 2022. On October 4, 2022, the Center reinstated the proceeding. The Respondent sent informal letters to the Center on July 28, 2022, October 4, 2022 and October 5, 2022.

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 October 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2022. The Respondent did not submit a formal Response. On November 16, 2022, the Center informed the Parties that it will proceed to Panel appointment.

The Center appointed Assen Alexiev as the sole panelist in this matter on November 17, 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 company specialized in the sale of shoes and accessories such as leather goods and jewelry for women.

The Complainant is the owner of the International trademark AMINA MUADDI with registration No. 1371021, registered on July 27, 2017 for goods and services in International Classes 3, 9, 14, 18, 25 and 35 in multiple jurisdictions, including the Russian Federation, where the Respondent is located (the "AMINA MUADDI trademark").

The Complainant is also the owner of the domain name <aminamuaddi.com> registered on March 9, 2017, which resolves to the Complainant's main website.

The disputed domain name was registered on June 15, 2022. The website connected to it is inactive.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its AMINA MUADDI trademark, because it reproduces the trademark exactly.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not affiliated with the Complainant and has not been authorized by the Complainant to use its AMINA MUADDI trademark or to register the disputed domain name. The Complainant adds that it has never had any relationship with the Respondent.

The Complainant adds that the Respondent cannot credibly claim that it had just accidentally or by coincidence registered the disputed domain name that is highly similar to the prior rights held by the Complainant, which have been registered and used for several years. According to the Complainant, the disputed domain name, which currently redirects to an error webpage, could also be used for malicious purpose, because the use of an identical or similar domain name is a key element to deceive and divert customers.

The Complainant maintains 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 that the disputed domain name is property of the Complainant in order to deceive and divert the Complainant's consumers.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent could not have been unaware of the Complainant's prior rights when it registered the disputed domain name, but had the Complainant's prior rights in mind at the time of the

registration of the disputed domain name. The Complainant adds that the registrations of the Complainant's AMINA MUADDI trademark significantly predate the date of the registration of the disputed domain name. The Complainant submits that the disputed domain name currently redirects to an error webpage and its passive holding constitutes bad faith use.

B. Respondent

The Respondent did not submit a formal Response.

With its communication of July 28, 2022, the Respondent stated:

"Hello, this domain was bought as a result of fraud activity in my account! And was not aware about this! I already made an application to the reg.ru (sic) to delete this domain. Let me know if this is suitable. Thank you in advance!"

With its communication of October 3, 2022, the Respondent stated:

"I would like to have a translator! I can't waste so much of my time for reading all these documents in English. I have signed the paper that I transfer all rights for this domen (sic), what else do you need?"

With its communication of October 5, 2022, the Respondent stated:

"Добрый день! Можно запросить, чтобы документы были dual language на русском и английском, пожалуйста. Я ознакомлюсь и подпишу. (Прошу прощения, я была в отпуске и не заходила в почту)." The English translation of this statement is: "Good morning! May I ask that the documents be dual language in Russian and English, please. I will get acquainted and sign. (Please excuse me, I was on vacation and did not access my email account)."

6. Discussion and Findings

6.1. Procedural issue – Language of the proceeding

According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is Russian. Under paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant requests that the language of the proceedings be English. It submits that the Respondent understands English, because the disputed domain name includes Latin letters rather than Russian script, English is the language the most widely used in international relations and is one of the working languages of the Center, the Complainant is a French entity and French and English are the main languages of communication for the Complainant, and the Complainant is unable to communicate in Russian. According to the Complainant, requiring it to submit documents in Russian would lead to delay and would cause translation expenses.

The Center has sent all its communications to the Respondent in both English and Russian, and has invited the Respondent to express its views on the language of the proceeding. The Respondent has sent two communications to the Center in English, which show that she understands this language. She requested the translation of the documents into Russian and confirmed her readiness to transfer the disputed domain name to the Complainant without denying her ability to use English, without making any objections to the Complainant's request that the proceedings be held in English, and without disputing the substance of the Complaint.

In view of the above, the Panel finds no reasons to conclude that the Respondent would be disadvantaged if the language of the proceeding is English, and accepts that using the English language in this proceeding would be fair and efficient.

Therefore, in exercise of its powers under paragraph 11 of the Rules, the Panel decides that the language of this administrative proceeding be English.

6.2 Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (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 Respondent has registered and is using the disputed domain name in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”

The Respondent however did not specifically respond to the statements and allegations contained in the Complaint and did not include any bases for the Respondent to retain registration and use of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the AMINA MUADDI trademark. Therefore, the Panel is satisfied that the Complainant has established its rights in the AMINA MUADDI trademark for the purposes of the present proceeding.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the Top-Level Domain (“TLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel sees no reason not to follow the same approach here, so it will disregard the “.store” gTLD section of the disputed domain name for the purposes of its comparison to the Complainant’s trademark. The Panel however notes that the choice of this gTLD by the Respondent is relevant for the purposes of the analysis under the second and the third elements of the Policy.

The disputed domain name reproduces the AMINA MUADDI trademark in its entirety without the space between the two word elements of the trademark (it is known that blank spaces are not allowed in domain names) and without the addition of any other elements. This composition of the disputed domain name makes it practically identical to the AMINA MUADDI trademark in which the Complainant has rights, and so the Panel finds.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 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. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not authorized it to use the AMINA MUADDI trademark and there is no relationship between the Parties. The Complainant points out that the disputed domain name is inactive, and according to it, may be used for illegitimate activities. The Complainant has thus established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a formal Response or disputed the contentions of the Complainant. She alleges that the disputed domain name was registered as a result of a fraud and without her knowledge, and that she has taken steps to cancel its registration or is ready to transfer it to the Complainant. The proceeding was suspended to allow a possibility for the Parties to settle, but they could not reach settlement.

The disputed domain name is identical to the distinctive AMINA MUADDI trademark and is registered in the “.store” gTLD. This composition of the disputed domain name creates the impression that it resolves to an online store selling AMINA MUADDI products, and as shown by the evidence submitted by the Complainant and not disputed by the Respondent, it is currently inactive. There is no evidence suggesting that the disputed domain name is not under the control of the Respondent. In any case, such a conclusion would not be compatible with the fact that the contact details of the registrant, including its email address, appear to be those of the Respondent, as it communicates with the Center through this address and alleges that it has taken steps to cancel the registration of the disputed domain name or that it is ready to transfer it to the Complainant, both of which actions would only be possible if the Respondent is indeed in control of the disputed domain name.

Taking the above into account, and in the absence of any evidence or allegation pointing to a conclusion that the disputed domain name could be used for some legitimate activity unrelated to the Complainant’s AMINA MUADDI trademark, it appears as more likely than not that the Respondent did not register the disputed domain name by coincidence, but knew the Complainant’s AMINA MUADDI trademark and targeted it when registering the disputed domain name, acting without the consent of the Complainant. This does not appear as a legitimate activity giving rise to rights or legitimate interests in the disputed domain name.

This is sufficient for the Panel to reach the conclusion that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(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 is identical to the AMINA MUADDI trademark, which was registered five years earlier, and the disputed domain name is registered in the ".store" gTLD, so Internet users are likely to regard it as an official online location where AMINA MUADDI products of the Complainant are offered for sale. The Respondent does not maintain that the Complainant has authorized the registration and use of the disputed domain name or provide any plausible explanation for the registration and intended use of the disputed domain name.

In view of the above, the Panel concludes that it is more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the AMINA MUADDI trademark to make the disputed domain name attractive for Internet traffic due to its identity with the same trademark.

The website connected to the disputed domain name is inactive. However, as discussed in section 3.3 of the [WIPO Overview 3.0](#), from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, some of the factors that have been considered relevant in applying the passive holding doctrine include the degree of distinctiveness or reputation of the complainant's mark, the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good faith use to which the domain name may be put.

The Panel finds these factors to be present here. The AMINA MUADDI trademark has distinctive appearance, the Respondent has not submitted a Response or provided evidence of any contemplated good faith use of the disputed domain name. The Panel therefore sees no basis to conclude that the disputed domain name, being identical to this distinctive trademark, could be put to any good faith use unrelated to it.

Therefore, the Panel finds that the disputed domain name has been registered and used 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 <aminamuaddi.store> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: November 29, 2022