Decision for dispute CAC-UDRP-102229

Case number	CAC-UDRP-102229
Time of filing	2018-11-21 13:28:05
Domain names	telethon.online

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ASSOCIATION FRANCAISE CONTRE LES MYOPATHIES

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Yemliha Toker

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

- TELETHON (word), the French Trademark Registration No.1399996, registered on March 23, 1987 and duly renewed;
- TELETHON (word), the International Trademark Registration No. 516359, registered on September 22, 1987 and duly renewed;
- TELETHON (figurative), the French Trademark Registration No. 1604213, registered on January 8, 1988 and duly renewed;
- TELETHON.FR LE DON EN LIGNE, the International Trademark Registration No. 952613, registered on January 23, 2008 and duly renewed.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS.

The Complainant states that it is an association of patients and their families who are affected by a genetic, rare, progressive and severely disabling illness: neuromuscular diseases. For more detailed information the Complainant refers to

its web site: http://www.afm-telethon.com/.
The Complainant organizes every year a fund-raising event named “The Telethon” (a charity event organized since 1987). It takes place every year on the first week-end of December with the help of hundreds of thousands of volunteers, millions of participants and lots of artists. The Telethon is also a 30-hour TV program on a public channel. The Complainant is the owner of several trademarks containing the term “TELETHON”.
The Complainant is also the owner of several domain names containing this term, such as <telethon.fr>.
The disputed domain name was registered on March 14 2018 and redirects to a different website which contains financial information.
The Complainant contends that the disputed domain name is identical to the Complainant’s TELETHON trademark as the trademark is included in its entirety in the disputed domain name and the addition of the gTLD “.online” does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent is not known by the disputed domain name and has not acquired trademark rights in respect of this designation. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant.
The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark or apply for registration of the disputed domain name.
The Complainant argues that since the disputed domain name redirects to a website displaying financial information, the Respondent used the disputed domain name in a way that fails to confer rights and legitimate interests, as it is used to promote unrelated services.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant contends that since the disputed domain name contains the Complainant's trademark in its entirety and the disputed domain name redirects to a website displaying financial information unrelated to the disputed domain name, the Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of Complainant. Therefore, the Respondent is obtaining commercial gain from the use of the disputed domain name and the resolving website.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT 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 Policy).

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 Policy).

BAD FAITH

The Complainant has not, 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 Policy).

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

A. Identity or confusing similarity

The Complainant owns registered trademarks that include the “TELETHON” word element.
As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), see paragraph 1.2.1: “Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case”.
The disputed domain name entirely incorporates the Complainant’s TELETHON trademark.
As stated in WIPO Overview 3.0 “In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing” (see par. 1.7).
The .online domain zone shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.
Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:
(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.
If the respondent fails to do so, the second element of the Policy is satisfied (see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110;
Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284).
The Respondent did not respond.
The disputed domain name is used for redirecting to a different web site that appears to publish finance and credit news.
The Panel notes that “Telethon” is a dictionary word that means “A very long television programme, typically one broadcast to raise money for a charity” or “a television show, usually several hours long, whose purpose is to make money for charity” (see https://dictionary.cambridge.org and https://en.oxforddictionaries.com). It has the same meaning in French (https://www.linguee.fr).

Panels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning (see WIPO Overview 3.0., par. 2.10.1).
The disputed domain name is used for redirecting to a different web site that appears not to be connected with the dictionary meaning of the disputed domain name and in the absence of any explanations from the Respondent, there is no evidence of any rights or legitimate interests of the Respondent as a mere fact of registration is not sufficient.
Therefore, the Panel finds that the Complainant has shown a prima facie case that has not been rebutted by the Respondent and satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.
These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.
The Complainant alleges that the Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's trademark and that the Respondent is obtaining commercial gain from its use of the disputed domain name and the resolving website.
However, there is no evidence to support this allegation of the Complainant. In particular, no evidence that the Respondent specifically targeted the Complainant is available in this case.

As stated in WIPO 3.0 Overview bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see par. 3.1 of WIPO 3.0 Overview).
The Panel notes that the Respondent's default would not by itself mean that the Complainant is deemed to have prevailed; a default is not necessarily an admission that the Complainant's claims are true and the Policy requires the Complainant to prove each of the three elements (see WIPO Overview 3.0, par. 4.3 and Western Research 3000, Inc. v. NEP Products, Inc., WIPO Case No. D2004-0755).
Telethon is a dictionary word in, at least, English and French languages.
Under paragraph 10(a) of the Rules the Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and the Rules and the Panel shall be able to independently visit the Internet in order to obtain additional information (see Société des Produits Nestlé SA v. Telmex Management Services, WIPO Case No. D2002-0070).

The Panel has, therefore, conducted an Internet search of the term "Telethon" and has found the following information.
While the Complainant has registered trademarks that include the "Telethon" word element, the Complainant is not the only organization that owns "Telethon" trademarks (see https://www.tmdn.org/tmview) and a simple Internet search reveals multiple references to Telethon events organized in various countries of the world by different entities (see e.g. https://en.wikipedia.org/wiki/Telethon and http://www.museum.tv/eotv/telethon.htm). There are also numerous domain names that include the "telethon" element and they are owned by different registrants (i.e. https://www.telethon.ch , http://www.telethon.it, https://telethonforamerica.com).
Therefore, the word "Telethon" is not associated exclusively or primarily with the Complainant and is used by different organizations.
From the evidence available in this case there is no indication that the Respondent based in Turkey was aware of the Telethon event organized and conducted by the Complainant in France. There is no evidence to demonstrate that the Complainant's marks were popular or famous in Turkey. The Complainant did not provide any proof that the Respondent registered the disputed domain name targeting the Complainant specifically and not because of its value and attractiveness as a dictionary word.
The disputed domain name redirects to a web site that has no connection with the Complainant's activity and nothing indicates that the Respondent somehow intended to profit from the Complainant and its trademarks.
As stated by one of the previous panels "It is well established in cases under the Policy that, for registration in bad faith to be made out, a complainant must demonstrate two elements, both on the balance of probabilities. First, the complainant must show that the respondent had or is likely to have had knowledge of the complainant's mark when it registered the domain name concerned. Secondly, the complainant must show that the respondent had bad faith intent at the point of registration of the domain name to target the complainant's rights in such mark" (see Tractor Supply Co. of Texas, LP, Tractor Supply Company v. Itai Dor-On / Domains By Proxy, LLC, WIPO Case No. D2015-0026).
These two elements are absent in the present case.

The Panel holds that the Complainant failed to satisfy the third requirement of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **TELETHON.ONLINE**: Remaining with the Respondent

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2018-12-31

Publish the Decision