Decision for dispute CAC-UDRP-102766

Case number	CAC-UDRP-102766
Time of filing	2019-11-06 09:42:40
Domain names	mycanal.plus

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	GROUPE CANAL +

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Super Privacy Service LTD c/o Dynadot

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademark registrations across various jurisdictions, inter alia French trademark no. 4304854 myCANAL, registered since October 5, 2016, and international trademark no. 1339315 myCANAL, registered since October 28, 2016. The trademarks are registered for a variety of goods and services, including "Scientific apparatus and instruments; recorded software, decoders, microphones, films, cassettes, video cassettes, tapes, discs; telephones; television and radio installations (..) as well as communications; news and information agencies; radio, telegraph or telephone communications, by television; teletype; transmission of messages, telegrams; broadcasting of programs, in particular by radio, television, video cassettes and cables" in classes 9 and 38.

FACTUAL BACKGROUND

The Complainant is a leading French audiovisual media group and a top player in the production of pay-TV and theme channels and the bundling and distribution of pay-TV services. With 16.2 million subscribers worldwide and a revenue of 5.16 billion euros, the Complainant offers various channels available on all distribution networks and all connected screens.

The Complainant is also the owner of several domain names consisting of the marks CANAL PLUS and myCANAL, such as

<canalplus.com> (created in 2006) and <mycanal.com> (created in 2013).

The disputed domain name was registered on October 10, 2019 and redirects to a parking page with pay-per-click links related to the Complainant and its activities.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT

The Complainant contends that the disputed domain name is identical to the trademark Complainant's trademarks MY CANAL.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant states that the Respondent has no relationship with the Complainant's business and is not authorized or licensed to use its trademarks. In addition, the Complainant contends that the Respondent is not commonly known by the disputed domain name and the redirecting of the disputed domain name to a parking page with commercial links related to the Complainant and its business is no bona fide offering of goods or services or legitimate noncommercial or fair use under the Policy.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. In this regard, the Complainant contends that the Trademark is widely known and highly distinctive and that the Respondent was fully aware of the Complainant when registering the disputed domain name. The Complainant also states that the Respondent has provided no evidence of any actual or contemplated good faith use by it of the disputed domain name and is using the disputed domain name to attract, for commercial gain Internet users to its website or other on-line location by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

RESPONDENT

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, 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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

(i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; 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.

1. The Panel accepts that the disputed domain name is identical to the Complainant's trademark myCANAL as it fully incorporates such trademark. It is well established that the specific top-level domain name generally is not an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between the complainant's trademark and the disputed domain name.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain name.

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, the Respondent’s use of the disputed domain name, i.e. a PPC parking page, does not constitute a bona fide offering of goods and services under paragraph 4(c)(i) of the Policy.

3.1 The Panel is satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in its trademarks as the myCANAL marks are well-established. In addition, the fact that the Respondent uses the disputed domain name in connection with a PPC parking page featuring advertising links for websites competing with the Complainant's services is clear evidence that the Respondent is deliberately targeting the Complainant.

3.2 As to bad faith use, by using the disputed domain name in connection with a landing page providing pay-per-click links which promote third parties’ products and services, the Respondent was, in all likelihood, trying to divert traffic intended for the Complainant’s website to its own for commercial gain as set out under paragraph 4(b)(iv) of the Policy. It is well established that a respondent (as the registered owner of the domain name) is in general ultimately responsible for the information available at the website and for all content posted there, regardless of how and by whom such content was generated and regardless of who profits directly from the commercial use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MYCANAL.PLUS**: Transferred

PANELLISTS

Name	**Peter Müller**

DATE OF PANEL DECISION 2019-12-12

Publish the Decision