Decision for dispute CAC-UDRP-102807

Case number	**CAC-UDRP-102807**
Time of filing	**2019-12-10 09:40:51**
Domain names	**stuidocanal.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**GROUPE CANAL +**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Name	**Robert Douglas Coles**

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other pending or decided legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of the following trade marks:
1. French trade mark STUDIO CANAL® No. 3015704 registered 20 March 2000;
2. European trade mark STUDIO CANAL® No. 001866151 registered 20 September 2000;
3. International trademark STUDIOCANAL No. 1109020 registered 23 December 2011.

The Complainant owns the website www.studiocanal.com and has owned this website since the 21 March 2000.

FACTUAL BACKGROUND

The Complainant, GROUPE CANAL + is a leading French based audiovisual company with a business address at 3-1 Place du Spectacle, 92130 ISSY-LES-MOULINEAUX, France. STUDIOCANAL, a subsidiary of the Complainant operates a studio in Europe for the production and distribution of movies and TV series. The Complainant is the registered owner of the following trade marks:
1. French trade mark STUDIO CANAL® No. 3015704 registered 20 March 2000;
2. European trade mark STUDIO CANAL® No. 001866151 registered 20 September 2000;
3. International trademark STUDIOCANAL No. 1109020 registered 23 December 2011.

The Complainant owns a number of websites that incorporate the term STUDIO CANAL. It owns the website www.studiocanal.com and has owned this website since the 21 March 2000.

The Respondent is Robert Douglas Coles of 14330 Marine Dr, White Rock, BCV4B 1B1, Canada. He is the registered owner of the disputed domain name stuidocanal.com. The disputed domain name was registered on 24 July 2019.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant asserts it has registered rights in the French word trade mark; the EU word trade mark and the International word trade mark for STUDIO CANAL described above. It submits that the disputed domain name is identical or confusingly similar to its trade marks.

The Complainant submits that the Respondent is typosquatting and the disputed domain name is a misspelling of its trade marks for STUDIO CANAL. According to the Complainant, the inversion of “i” and “o” in the disputed domain name does not change the overall impression that the disputed domain name is connected to its trade mark.

It notes that Panels have found that slight spelling variations do not prevent trade marks from being considered confusingly similar. In support of this argument the Complainant cites WIPO Case No. D2003-0093, Microsoft Corporation v. X-Obx Designs <xobx.com>.

It follows the Complainant contends, that the disputed domain name is confusingly similar.

The Complainant claims that the Respondent has no rights or legitimate interest in the disputed domain name.

The Complainant refers to the decision in WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd. and claims that once it has proved a prima facie case, the burden of proof shifts, and it is up to the Respondent to demonstrate its rights or legitimate interests in the disputed domain name. In circumstances where the Respondent fails to prove its case, the Complainant is deemed to have satisfied limb 4(a)(ii) of the Policy.

The Complainant submits that the Respondent is not identified in the Whois record as the disputed domain name. Referring to Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>, the Complainant notes that Panels have found that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name.

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name, it is not related to the Complainant in any way nor do the parties carry out any business together. Moreover, the Complainant confirms that the Respondent had not applied for, or been granted a licence to use the disputed domain name. The Complainant notes that use of the disputed domain name is for the purpose of typosquatting. It explains that typosquatting takes advantage of Internet users typographical errors and is evidence that a Respondent lacks rights or legitimate interest in a disputed domain name. In support of this point the Complainant relies on the Panel’s finding in Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group.

The Complainant asserts that the disputed domain name has remained inactive since registration which proves the Respondent had no plan to use the mark and therefore, he has no legitimate interest in the disputed domain name.
As a result, the Complainant asserts that the Respondent lacks any rights or legitimate interest in the disputed domain

name.

The Complainant submits that the Respondent has registered and uses the disputed domain name in bad faith.

The Complainant submits that the disputed domain name is confusingly similar to its earlier and distinctive trade marks for STUDIO CANAL.

It says that the Respondent could have carried out a simple Google search prior to registration and it would have found several results for STUDIO CANAL. It claims that the Respondent could not have ignored the existence of the STUDIO CANAL at the time of registration, and it claims this is not a coincidence. In support of this point the Complainant relies on the Panel's findings in WIPO Case No. D2017-0660, Boehringer Ingelheim Pharma GmbH & Co.KG v. Pan Jing.
Referring to the findings in - Forum Case No. FA 877979, Microsoft Corp. v. Domain Registration Philippines and Forum Case No. 157321, Computerized Sec. Sys., Inc. v. Bennie Hu, the Complainant submits that previous panels have found misspelling of trade marks as evidence of bad faith.

The Complainant further submits that the disputed domain name is in-active and the Respondent has not demonstrated any use of the disputed domain name. It argues that it is not conceivable that the Respondent would be using the disputed domain name for any other purpose that would not be illegal such as passing off, infringement of consumer legislation or infringement of the Complainant's registered trade marks.

Therefore, the Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith.

RIGHTS

The Complainant has established that it owns the French, European and International trade marks for STUDIO CANAL. The French trade mark was registered under number 3015704 on 20 March 2000. The European trade mark was registered under number 001866151 on 20 September 2000. The International trade mark was registered under number 1109020 on 23 December 2011.

The disputed domain name is almost identical to the first element before the top-level domain name root ".com" of the Complainant's STUDIO CANAL trade mark apart from the inversion of "i" and "o". The variation of the spelling is minor such that it does not change the overall impression given by the mark. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trade marks and the Complaint succeeds under this element of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant says that it has neither licensed nor authorised the Respondent to use its STUDIO CANAL mark and that it does not carry out business with the Respondent. It also submits that the Respondent is not commonly known by the disputed domain name.

The Complainant's case is that the disputed domain name is a typosquatted version of the Complainant's well reputed STUDIO CANAL mark. The evidence submitted confirms that the website to which the disputed domain name resolves is in-active. The Complainant has provided evidence of a print-out confirming that it is not possible to connect to <stuidocanal.com>. It appears that the Respondent has not used the disputed domain name since its registration and there is no evidence to suggest that it has a bona fide intention to use it.

For these reasons the Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond or to rebut this case, therefore and for the reasons set out below under "Bad Faith" the Panel finds that the Complainant succeeds under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Complainant's trade marks were registered as early as 2000 and the disputed domain name was only registered on 24 July 2019, very many years after that date, Complainant asserts that the Respondent was or should have been aware of the Complainant's registered rights by mid-2019 on the basis that the STUDIO CANAL mark had been substantially used and was well reputed by that date and would have shown up in any event on a simple internet search. The Panel accepts that, based on the evidence on record, the Complainant enjoys considerable renown attaching to its STUDIO CANAL trade marks and also that considering that the disputed domain name differs by only one letter from the Complainant's distinctive marks, that it is most likely that the Respondent was well aware of the Complainant's marks when it registered the disputed domain name and did so on purpose with a view to taking advantage of the goodwill attaching to the Complainant's marks.

The disputed domain name does not resolve to a website and it appears that it has been held passively since its registration. Panels have found that the non-use of a disputed domain name will not prevent a finding of bad faith in appropriate circumstances. The relevant factors are set out at section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition and include a consideration of (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 evidence of actual or contemplated good faith use; (iii) the Respondent's concealment of its identity or provision of false contact details and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

In this case the Complainant's STUDIO CANAL mark has, in the Panel's view, a high degree of distinctiveness and through use over many years has developed a very considerable degree of reputation and goodwill in connection with a very well-known television and movie production studio in Europe. The Respondent has failed to provide any explanation for its registration of the disputed domain name. In view of the distinctive nature of the STUDIO CANAL marks and the manner in which the d" and the "l" in "studio" have been inverted, it seems to the Panel, as noted earlier, that this is likely to be a case of typosquatting in which the Respondent registered and intended to use the disputed domain name in bad faith for its own commercial ends.

In these circumstances the Panel finds that the Respondent has both registered and used the disputed domain name in bad faith and the Complaint also succeeds under this element 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

The Complainant owns registered trade mark rights for the STUDIO CANAL trade marks. The disputed domain name wholly incorporates these marks and as a result the disputed domain name is confusingly similar to the Complainant's trade marks.

There is no evidence that the Respondent was permitted to use the Complainant's STUDIO CANAL trade mark and no evidence that it was making a bona fide or non-commercial use of the disputed domain name.

The STUDIO CANAL trade marks enjoy an established reputation and are distinctive. As a result, it is likely that the disputed domain name was registered with prior knowledge of the Complainant's trade marks.

Although the disputed domain name does no re-direct to an active website and there is no evidence of use since registration, the circumstances of this case including the considerable reputation attaching to the STUDIO CANAL marks, the apparent typosquatting by the Respondent and its failure to explain the registration of the disputed domain name are indicative of registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **STUIDOCANAL.COM**: Transferred

PANELLISTS

Name	**Alistair Payne**

DATE OF PANEL DECISION 2020-01-13

Publish the Decision