Decision for dispute CAC-UDRP-102881

Case number	CAC-UDRP-102881
Time of filing	2020-01-28 11:13:39
Domain names	cnews.live

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	SOCIETE D'EXPLOITATION D'UN SERVICE D'INFORMATION

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	NEWS REPORTER

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is a subsidiary of the Group CANAL+ that it is in fact the holder of the broadcasting authorization and official concession for the French TV Channel CNEW.
It is a TV that covers news in real time.
The Complainant owns the following registrations:
French Reg. 4308347 for C NEWS effective since October 18th 2016 and the identical International Reg. 1358557 as of March 29th 2017.
Furthermore the Complainant owns few domain names comprising the words cnews such as the following : cnews.fr; cnews.sport.
The Respondent after having registered the captioned disputed domain name on 2nd January 2020 has left the domain name inactive.

FACTUAL BACKGROUND

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

The disputed domain name <cnews.live> is identical to the Complainant’s trademark C NEWS. Indeed, the trademark is

included in its entirety, without any addition or deletion.
See DIRECTV, LLC v. The Pearline Group, FA 1818749 (Forum Dec. 30, 2018) ("Complainant's ownership of a USPTO registration for DIRECTV demonstrate its rights in such mark for the purposes of Policy paragraph 4(a)(i).").

The disputed domain name contains Complainant's trademark C NEWS followed by the new GTLD ".live" who is suggestive of Complainant's news services in "live" and thus only adds to any confusion.
See American Broadcasting Companies, Inc. v. Marko Cvetkovski, FA1810001810971 (Forum Nov. 04, 2018 - "Respondent's domain name contains Complainant's ABCNEWS trademark followed by the top-level domain name ".live". The differences between the at-issue domain name and Complainant's trademark are insufficient to distinguish one from the other for the purposes of Policy paragraph 4(a)(i). In fact, the descriptive top-level domain name is suggestive of Complainant's "live" news services and thus only adds to any confusion.").

The Complainant asserts that the Respondent is identified in the WHOIS database as "NEWS REPORTER". The record contains no evidence that might otherwise tend to prove that Respondent is commonly known by the at-issue domain name. The Complainant therefore concludes that for the purposes of Policy paragraph 4(c)(ii) Respondent is not commonly known by the at-issue domain name. See Navistar International Corporation v. N Rahmany, FA1505001620789 (Forum June 8, 2015 - finding that the respondent was not commonly known by the disputed domain name where the complainant had never authorized the respondent to incorporate its NAVISTAR mark in any domain name registration); see also, Coppertown Drive-Thru Sys., LLC v. Snowden, FA 715089 (Forum July 17, 2006 - concluding that the respondent was not commonly known by the <coppertown.com> domain name where there was no evidence in the record, including the WHOIS information, suggesting that the respondent was commonly known by the disputed domain name).

Using a domain name incorporating the mark of another to host an inactive website is not be a bona fide offering of goods or services or a legitimate noncommercial or fair use under the Policy. See Kohler Co. v xi long chen, FA 1737910 (Forum Aug. 4, 2017 - "Respondent has not made a bona fide offering of goods or services, or a legitimate non-commercial or fair use of the domain. Respondent's <kohler-corporation.com> resolves to an inactive webpage displaying the message "website coming soon!"); see also Bloomberg Finance L.P. v. Janice Reading, FA1909001864801 (Forum Oct. 28, 2019 - "Complainant has provided evidence that the resolving webpage displays the message "this site can't be reached." Accordingly, Respondent's use of the <blooornberg.net> domain name fails to confer rights and legitimate interests for the purposes of Policy paragraphs 4(c)(i) or (iii).").

The disputed domain name is currently being passively held by Respondent. Such use is not a legitimate noncommercial or fair use under paragraph 4(c)(iii) under the Policy. See Thermo Electron Corp., supra (finding that the respondent's non-use of the disputed domain names demonstrates that the respondent is not using the disputed domain names for a legitimate noncommercial or fair use pursuant to Policy paragraph 4(c)(iii)); NIC Industries, Inc., supra (finding that the respondent was not making a legitimate noncommercial or fair use of the domain name because respondent was not actively using the disputed domain name); Hewlett-Packard Co., supra (finding that a respondent's non-use of a domain name that is identical to a complainant's mark is not a legitimate noncommercial or fair use pursuant to Policy paragraph 4(c)(iii)). Panels have consistently held that the registration and subsequent non-use of a domain name that is confusingly similar to a complainant's mark constitutes use in bad faith. Clerical Med. Inv. Group Ltd. v. Clericalmedical.com, D2000-1228 (WIPO Nov. 28, 2000 - finding that merely holding an infringing domain name without active use can constitute use in bad faith); Michelin North, supra (concluding that respondent registered and used the disputed domain names in bad faith under Policy paragraph 4(a)(iii) where a printout from the resolving website indicated that respondent's websites were inactive, and there was no evidence the domain names were being used for any other purpose).

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, 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

LEGAL GROUNDS:

A. THE DOMAIN NAME IS CONFUSINGLY SIMILAR

The domain name <cnews.live> (hereinafter referred to as the “disputed domain name”) incorporates the Complainant’s registered trademark CNEWS. The addition of the gTLD “.live” does not add any distinctiveness to the disputed domain name.
Referring to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), as the term “CNEWS is distinctively recognizable in the disputed domain name, the disputed domain name should be considered as identical and confusingly similar to the trademark C NEWS.

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DOMAIN NAME

The Complainant has never granted the Respondent any right to use the CNEWS trademark within the disputed domain name, nor is the Respondent affiliated to the Complainant in any form.

The Complainant has not found that the Respondent is commonly known by the disputed domain name or that it has interest over the disputed domain name or the major part of it. When entering the terms “CNEWS” in the Google search engine, the returned results all point to the Complainant and its business activity.

From the Complainant’s perspective, by associating the disputed domain name with phishing mail, the Respondent is intending for commercial gain to misleadingly divert consumers to its website or to website of others, which is obviously not making a legitimate, noncommercial or fair use of the disputed domain name. The Respondent name is NEWS REPORT but no traces of this company was found on the internet.

There is no evidence showing that the Respondent’s use of the disputed domain name is in connection with a bona fide offering of goods or services.

Taking into account of the above, the Respondent shall be considered as having no right nor legitimate interest in respect of the disputed domain name.
Furthermore the Respondent’s domain name is inactive and the only purpose of its registration is to obstacles the Complainant’s activities and to distort users from CNEWS to CNEWS.LIVE.

C. THE DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

It has to be highlighted that the Complainant’s trademarks predate the registration of the disputed domain name and the Respondent has never been authorized by the Complainant to use these trademarks nor to register the disputed domain name. Even though the Complainant has failed to prove a widespread recognition of the trademark C NEWS and its TV channel , this TV name can be easily found on the internet . The Respondent has chosen to register a domain name identical to the Complainant's trademark for LIVE program related to NEWS (a normal search on the internet would have discovered the real site of CNEWS which is quite known being a CANAL+ connected operator) . From the Complainant’s perspective, it is very likely that the Respondent had the trademark in mind when he registered the disputed domain name and registered it only to mislead Internet users. It could have been easy to search on the internet and find CNEWS. Furthermore choosing a specific domain name such as .LIVE the Registrant has wanted to underline that CNEWS is connected to a TV LIVE program. In the absence of any Respondent's argument or justification this Panel has to consider the Complainant's position only.

Furthermore, the disputed domain name is inactive. The Complainant contends that the Respondent did not make any use of the disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Complainant cited the following cases: 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> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).”) and Case No. FA 1031703, Minicards Vennootschap Onder FIrma Amsterdam v. Moscow Studios (holding that respondent registered a domain name in bad faith under Policy paragraph 4(a)(iii) after concluding that respondent had "actual knowledge of Complainant's mark when registering the disputed domain name").

More appropriate seem to be the following WIPO cases: UDRP decisions confirmed that the passive holding of a domain name with knowledge that the domain name infringes another party’s trademark rights is evidence of bad faith registration and use (see, in this regard, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003, Jupiters Limited v. Aaron Hall, WIPO Case No. D2000-0574). In particular, the consensus view of WIPO UDRP panellists is that passive holding of a disputed domain name may, in appropriate circumstances, be consistent with a finding of bad faith.

Therefore, it is reasonable to conclude that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or website of others, by creating a likelihood of confusion with the Complainant’s trademark.

SUMMARY

To summarize, 1) the trademark CNEWS is known and any search on the internet would have informed the Respondent of the existence of this network. Its registration predates the registration of the disputed domain name; 2) The Respondent bears no relationship to the trademarks or the Complaint; it is not commonly known by the disputed domain name nor that has it interest over the disputed domain name or the major part of it; 3) The Respondent has not been using the disputed domain name and passive holding is an indication of bad faith in the absence of any contrary argument by the Respondent.

Consequently, the Respondent should be considered to have registered the disputed domain name confusingly similar to the Complainant’s registered trademark.
The disputed domain name has to be reassigned to the Complainant.
Massimo Cimoli

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CNEWS.LIVE**: Transferred

PANELLISTS

Name	**Massimo Cimoli**

DATE OF PANEL DECISION 2020-03-04

Publish the Decision