Decision for dispute CAC-UDRP-102861

Case number	CAC-UDRP-102861
Time of filing	2020-01-20 10:06:23
Domain names	canalplus.watch

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	GROUPE CANAL +

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Nicolas Courtier

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

In these proceedings, the Complainant relies on the following trademarks:

- CANAL PLUS, International Registration No. 509729, filed on March 16, 1987, in the name of GROUPE CANAL+ (the Complainant).

- CANAL PLUS, International Registration No. 619540, filed on May 5, 1994, in the name of GROUPE CANAL+ (the Complainant).

It is worth noting that, the Complainant owns many similar trademarks in various countries (including in France), which have not been cited in these proceedings.

FACTUAL BACKGROUND

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

The Complainant is the largest French audiovisual media group. It has extensive activities in the entertainment business all

around the world, where it counts an impressive 16.2 million subscribers.

The Complainant owns a large-sized portfolio of trademarks including the wording "CANAL PLUS", among which a French registration dating back to 1982. It also owns a multitude of related domain names, like <canal-plus.com> since March 28, 1996 and <canalplus.com> since May 19, 2006.

The disputed domain name <canalplus.watch> was registered on January 7, 2020, apparently by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its CANAL PLUS registered trademark, as it wholly incorporates such trademark. This last element is sufficient to support the finding that the disputed domain name is confusingly similar to the Complainant's trademark. As to the gTLD ".watch", the Complainant asserts that it increases the chances of confusion, since it makes direct reference to the Complainant's activity.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name, because the Respondent is not known by the disputed domain name, the Complainant is neither affiliated with the Respondent, nor has it ever authorised the Respondent to register its trademark as a domain name, and the Complainant has no business with the Respondent.

According to the Complainant, given the seniority, distinctiveness and worldwide reputation of the CANAL PLUS trademark, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark in an intentionally designed way, with the aim to create a likelihood of confusion with the Complainant's trademarks and domain names, and this is evidence of the fact that the disputed domain name was registered in bad faith.

With respect to use in bad faith, the Complainant points out that the Respondent has used the disputed domain name, so as to attract users for commercial gain, a fact that – in combination with the incorporation of a famous trademark in a domain name – proves use in bad faith.

For all these reasons, the Complainant concludes that the Respondent registered and used the disputed domain name in bad faith.

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).

The disputed domain name consists of the Complainant's whole trademark (CANAL PLUS). There is nothing else in the disputed domain name, sufficient to escape the finding that the disputed domain name is confusingly similar to the registered trademark of the Complainant.

As far as the gTLD ".watch" is concerned, it actually reinforces the confusion, as it relates directly to the activities of the Complainant, as an audiovisual media group.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the CANAL PLUS trademark in a domain name, and that it had never licensed its trademarks to the Respondent.

Furthermore, the Respondent has not demonstrated any use of the disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore, the Panel is satisfied that also the second requirement under the Policy is met.

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).

As far as registration in bad faith is concerned, given the seniority and reputation of the Complainant's registered trademark and the fact that the disputed domain name fully incorporates this trademark, it is evident that, at the time of the registration of the disputed domain name, the Respondent (a French citizen) was well aware of the Complainant's trademark. The registration of a domain name of third party's well-known trademark, with full knowledge of the fact that the rights over this trademark belong to a third party, amounts to registration in bad faith.

With respect to use in bad faith, the disputed domain name resolves to an inactive, parking website. This fact is to be combined with the full incorporation of the Complainant’s reputable trademark in the disputed domain name. For this Panel, same as for many previous panels, such misleading behaviour clearly amounts to use in bad faith. Consequently, it is impossible to conceive any plausible active use of the disputed domain name that would be legitimate.

Therefore, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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 disputed domain name wholly incorporates the Complainant's well-known registered trademark. The disputed domain

name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademark to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's reputable trademark. His use of the disputed domain name is in bad faith, as there is no conceivable use of the disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CANALPLUS.WATCH**: Transferred

PANELLISTS

Name	**Sozos-Christos Theodoulou**

DATE OF PANEL DECISION 2020-03-03

Publish the Decision