Decision for dispute CAC-UDRP-103321

Case number	CAC-UDRP-103321
Time of filing	2020-09-30 10:54:03
Domain names	canal-streaming.com

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 legal proceedings which are pending or decided, and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns a large portfolio of trademarks including the wording "CANAL" and “CANAL PLUS”, such as:

- International trademark CANAL n° 1357131, registered since March 10, 2017;

- French trademark CANAL n° 4298639, registered since September 12, 2016;

- International trademark CANAL PLUS n° 509729, registered since March 16, 1987 and duly renewed;

- International trademark CANAL PLUS n° 619540, registered since May 5, 1994 and duly renewed.

Furthermore, the Complainant owns multiple domain names consisting in the wording "CANAL" and “CANAL PLUS” such as:

<canalplus.com> registered on May 20, 2006;

<canal-plus.com> registered on March 28, 1996;

<canalplus-streaming.com> registered on May 29, 2019;

<canalplusstreaming.com> registered on May 29, 2019;

<canalstreaming.com> registered on January 18, 2016.

FACTUAL BACKGROUND

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

The Complainant is the 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 of 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 owns a large portfolio of trademarks and domains including the wording "CANAL" and “CANAL PLUS”.

The disputed domain name was registered on August 30, 2020 and resolves to a website offering a streaming access of Canal Plus's channels, including other various Television Channels.

The disputed domain name is in the view of Complainant confusingly similar to the Complainant’s trademarks.

The word “streaming” (“a continuous mode of content distribution, live or slightly delayed”) describes the products or services in relation with the Complainant’s business, therefore, may lead to user confusion.

The addition of the generic Top-Level Domain suffix “.COM” does not change the overall impression of the designation as being connected to the trademark of Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

Thus, the disputed domain name is in the view of Complainant confusingly similar to the Complainant’s trademark.

The Complainant asserts that the Respondent is not identified in the WHOIS database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

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 licence 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 by the Complainant.

The disputed domain name is used in connection with a website providing content and services in direct competition with those provided by Complainant. To access to the content, the website invites Internet users to click to advertising banners. The website lists no information regarding the alleged company’s address or history and no phone number is available for users.

The diversion of Internet users to competitors of Complainant does not give rise to any rights or legitimate interests in the domain name on the part of Respondent within the meaning of paragraph 4(c)(i) of the Policy.

Accordingly, the Respondent has in the view of Complainant no rights or legitimate interests to the disputed domain name.

The Complainant states that the disputed domain name is confusingly similar to its trademarks. Furthermore, the website

displays the Complainant’s logos. Therefore, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

The disputed domain name is used in connection with a website providing content and services in direct competition with those provided by Complainant by clicking to advertising banners. The Complainant argues that Respondent registered and uses the disputed domain name in bad faith since Respondent uses the confusingly similar domain name to attract Internet users to its website for commercial gain. Use of a disputed domain name to offer competing goods and/or services may evidence bad faith attraction for commercial gain under Policy 4(b)(iv).

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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

A. Identical or Confusingly Similar

The Complainant has rights in the mark by virtue of its registered trademarks CANAL and CANAL PLUS.

The disputed domain name incorporates the whole of the Complainant’s CANAL trademark, and adds the generic word “streaming" as a suffix and the gTLD suffix “.com". Whilst the addition of the term “streaming” is enough to preclude the disputed domain name from being identical to the Complainant’s registered trademark, it does not help to escape the conclusion that the disputed domain name is confusingly similar to the "CANAL" mark, and the Panel accepts the Complainant’s submissions in so finding.

The Panel agrees with the Complainant that the addition of the generic term "streaming" with a hyphen at the end of the disputed domain name and the gTLD “.com” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademark and does not change the overall impression of the designation as being connected to the trademark "CANAL", as the CANAL trademark at the beginning of the disputed domain name is the distinctive part of the disputed domain name. The Panel agrees with Complainant that the term “streaming,” which is applicable as a descriptive term to the field of TV in which the Complainant plays a prominent role, i.e., is likely to increase the possibility of confusion amongst consumers. Therefore the Panel finds, that the disputed domain name is confusingly similar to the Complainant’s trademark CANAL.

B. Rights or Legitimate Interests

When a respondent remains completely silent in the face of a prima facie case that it lacks any rights or legitimate interests in respect of a domain name, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. Here the Complainant has presented an abundance of evidence to show that the Respondent has no plausible right or legitimate interest in respect of the Disputed domain name and the Panel so finds.

C. Bad Faith

The Panel believes that Respondent registered the disputed domain name with knowledge of Complainant's rights. The disputed domain name was registered decades after the registration of several trademarks of the Complainant and Complainant used it widely since then. Furthermore, the combination in the disputed domain name of the CANAL mark with the Complainant´s business related term "streaming" shows that Respondent could not be ignorant to the Complainant´s trademark. Furthermore, Respondent uses the trademark CANAL of Complainant on several places on the website of the disputed domain name.

Moreover, the Panel agrees with Complainant that the disputed domain name has also been registered in an effort to take advantage of the goodwill that Complainant had built up in its CANAL trademark, and to unduly benefit from creating a diversion of the internet users of the Complainant by pretending to be an official online partner of the Complainant or even the Complainant himself, because the Respondent is at least pretending to offering/advertising streaming service and is displaying the trademark of the Complainant.

Finally, the Respondent has, by prominently displaying the trademark of Complainant on the website, intentionally attempted to attract Internet users to the Respondent's website for commercial gain by offering (and probably selling) Complainant's products/services and therefore creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such websites.

On these grounds, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CANAL-STREAMING.COM**: Transferred

PANELLISTS

Name	**Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION 2020-11-01

Publish the Decision