Decision for dispute CAC-UDRP-103424

Case number	CAC-UDRP-103424
Time of filing	2020-11-23 09:29:51
Domain names	canalplusvpn.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	GROUPE CANAL +

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Icarus Media Digital

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 the following trade marks for CANAL PLUS:
• French trade mark registration number 1218827, registered on 5 November 1982;
• International trade mark registration number 509729, registered on 16 March 1987; and
• International trade mark registration number 619540 registered 5 May 1994.

FACTUAL BACKGROUND

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

The Complainant is a leading French audio-visual media group involved in the production of pay-tv and theme channels and the bundling and distribution of pay-tv services.

The Complainant owns a large portfolio of trade marks for CANAL PLUS that predate the registration of the disputed domain name. It also owns numerous domain names incorporating the words “CANAL PLUS”, such as <canalplus.com> registered on 20 May 2006, and <canal-plus.com> registered on 28 March 1996.

The disputed domain name <canalplusvpn.com> was registered on 16 April 2019 and points to a registrar parking page.

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 trade mark 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

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:
(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
(ii) the Respondent has no rights or legitimate interests in the disputed domain name; and
(iii) The disputed domain name has been registered and is being used in bad faith.

A. Rights

The Complainant asserts that the disputed domain name is confusingly similar to its trade mark CANAL PLUS. It states that the addition of the abbreviation “vpn” and the top-level domain “.com“ do not prevent the likelihood of confusion with the Complainant, its trade marks and domain names. In support it refers to CAC Case No. 103036, GROUPE CANAL + v. Jean Pierre benoit, in which the Panel found that “the disputed domain name <fr-canalplus.com> is confusingly similar to the Complainant's distinctive trademark CANAL PLUS, which is widely known and well-established.”

It is generally accepted that the addition of the top-level suffix “.com” does not add any distinctiveness to a domain name and can be disregarded when assessing whether the disputed domain name is confusingly similar to the Complainant’s trade mark. See International Business Machines Corporation v. Sledge, Inc./Frank Sledge (WIPO Case No. D2014-0581).

The most distinctive part of the disputed domain name are the words “CANAL PLUS”. The addition of the abbreviation “vpn”, which is commonly understood to mean “virtual private network”, does not prevent the overall impression that the disputed domain name is confusingly similar the Complainant's trade mark CANAL PLUS.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trade mark and that the requirements of paragraph 4(a)(i) of the Policy have been met.

B. No rights or legitimate interest

The Complainant asserts that the Respondent does not have any rights or legitimate interest in the disputed domain name and states that the Respondent:
(i) is not identified in the WHOIS database as the disputed domain name, nor is known as the disputed domain name;
(ii) is not related in any way to the Complainant, does not carry out any activity for the Complainant, has no business with it and is not licensed nor authorised to make any use of the Complainant's trade mark, nor authorised by the Complainant to apply for the registration of the disputed domain name; and
(iii) has not made any use of disputed domain name since its registration, which confirms that he has no demonstrable plan to use the disputed domain name and demonstrates a lack of legitimate interests in it.

The Panel finds that the Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The burden of proof now shifts to the Respondent to show that he has rights or legitimate interests in the disputed domain name.

The Respondent has not filed a Response and has submitted no evidence to show that he has been commonly known by the disputed domain name, or has used, or has been preparing to use, the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate non-commercial or fair use, without intent for commercial gain. A passive website by itself is not evidence of a bona fide offering of goods or services nor a legitimate non-commercial or fair use.

Taking the above factors into consideration the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. Registered and used in bad faith

The Complainant asserts that the disputed domain name has been registered and is being used in bad faith and states that:
(i) the disputed domain name is confusingly similar to its well-known and distinctive trade mark CANAL PLUS;
(ii) all the Google results for the terms "CANAL PLUS VPN" refer to the Complainant and the Respondent could not have been unaware of the Complainant's CANAL PLUS trade marks when it registered the disputed domain name;
(iii) the Respondent has not demonstrated any activity in respect of the disputed domain name which resolves to a registrar parking page; and
(iv) it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate.

The Complainant's trade marks pre-date the registration of the disputed domain name. The Respondent has not filed a Response nor asserted any reason for incorporating the Complainant's distinctive and well known-trade mark, CANAL PLUS when he registered the disputed domain name.

A basic search would have revealed the Complainant's rights in the name CANAL PLUS. It is most likely that the Respondent knew of the Complainant's prior rights when he registered the disputed domain name and registered it with the intention of creating a likelihood of confusion with the Complainant's mark.

As stated in WIPO Case No. D2019-2942, Groupe Canal + v. Paweł Zawiszewski, Antena <canalplus.tech>, "the disputed domain name was registered years after the Complainant registered the CANAL PLUS mark. The fact that the Complainant's mark predates the registration of the disputed domain name as well as the global reputation of the CANAL PLUS mark indicates that the Respondent knew or should have known about the Complainant's rights when registering the disputed domain name".

The Respondent has used a privacy shield to conceal its identity when he registered the disputed domain name which incorporates the Complainant's well-known trade-mark. The Respondent has not filed a Response or provided any evidence of actual or contemplated good-faith use and there appears no good faith use to which to disputed domain name could be put.

Taking all these factors into account, the Panel concludes that the disputed domain name was registered and is being used in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CANALPLUSVPN.COM**: Transferred

PANELLISTS

Name	**Veronica Bailey**

DATE OF PANEL DECISION 2020-12-27

Publish the Decision