Decision for dispute CAC-UDRP-102809

Case number	**CAC-UDRP-102809**
Time of filing	**2019-12-10 09:45:27**
Domain names	**studiocanale.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**GROUPE CANAL +**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Name	**Danny Sullivan**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is owner of the following device trademarks including the wording “STUDIO CANAL”:
- the French trademark STUDIO CANAL n° 3015704 registered in classes 09, 16, 25, 35, 38, 41, 42 since September 20th, 2000 and duly renewed;
- the European Union trademark STUDIO CANAL n° 001866151 registered in classes 09, 16, 35, 38, 41, 42 since September 20th, 2000 and duly renewed;
- the International trademark STUDIOCANAL n° 1109020 registered in classes 09, 16, 25, 35, 38, 41, 42 since December 23rd, 2011, based on the European Union trademark n° 010093797, countries designated under the Madrid Protocol: Australia, Switzerland, Monaco.

The Complainant also owns the domain name <studiocanal.com> registered since March 21st, 2000.

FACTUAL BACKGROUND

The following facts are 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.

STUDIOCANAL, a subsidiary of the Complainant, is the leading studio in Europe for the production and distribution of movies and TV series with a strong European base as well as considerable international potential. It operates directly (distribution to movie theatres, video, digital and TV) in the three main European markets – France, the United Kingdom and Germany – as well as in Australia and New-Zealand. STUDIOCANAL is also present in the United States and China.

The disputed domain name was registered by the Respondent on November 9th, 2019 and redirects to the homepage of a domain marketplace <domainnamesales.com>.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

A summary of the Complainant’s contentions is as follows:

1. The disputed domain name is confusingly similar to the Complainant's trademarks.
2. The Respondent is engaged in a clear case of misspelling / typosquatting.
3. The Respondent has no legitimate rights or interests in the domain name, since he is not identified in the WHOIS database as the disputed domain name.
4. The Respondent is not related in any way with the Complainant and the Complainant does not carry out any activity for, nor has any business with him. Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant’s trademarks, or apply for registration of the disputed domain name.
5. The disputed domain name redirects to the homepage of a domain marketplace, which proves that the Respondent has registered the disputed domain name with the aim to divert Internet traffic initially destined to the Complainant by creating a likelihood of confusion and by trading on the reputation of the Complainant's trademarks. The content of the website is unrelated to the disputed domain name. This does not constitute a bona fide offering of goods.
6. The disputed domain name has been registered in bad faith, because the Respondent could not have ignored the Complainant’s trademarks at the moment of the registration of the disputed domain name, which cannot be a coincidence.
7. The misspelling / typosquatting was intentionally designed by the Respondent to be confusingly similar with the Complainant’s trademark and official domain name <studiocanal.com>.
8. The disputed domain name redirects to the homepage of a domain marketplace which is to be considered as an attempt of the Respondent to attract Internet users for commercial gain to his own website thanks to the Complainant’s trademark and evidence of 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).

NO RIGHTS OR LEGITIMATE INTERESTS

In the view of the Panel's conclusion on the bad faith element, it is unnecessary to consider whether the requirements of paragraph 4(a)(ii) of the Policy are met.

BAD FAITH

The Complainant has not, 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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:
(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used by the Respondent in bad faith.

Thus, the onus is on the Complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name. Whilst panellists may undertake limited factual research into matters of public record (WIPO Overview 4.8), this does not mean that they should do most of the "legwork" to establish the parties' allegations.

Under paragraph 15 of the Rules, a panel's assessment will normally be made on the basis of the statements and the evidence presented in the complaint and any filed response. The panel may draw inferences from the absence of a response as it considers appropriate, but will weigh all available evidence irrespective of whether a response is filed (WIPO Overview 2.1).

It is consensus view of UDRP panels that the respondent's default will not automatically result in the transfer of the domain name to the Complainant (WIPO Overview 4.3: "Noting the burden of proof on the complainant, a respondent's default (i.e., failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true. In cases involving wholly unsupported and conclusory allegations advanced by the complainant, or where a good faith defense is apparent (e.g., from the content of the website to which a disputed domain name resolves), panels may find that – despite a respondent's default – a complainant has failed to prove its case.")

A. IDENTITY OR CONFUSINGLY SIMILARITY

Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case (WIPO Overview 1.2.1).

The Complainant has provided sufficient documentary evidence to demonstrate to be owner of device marks including the wording "STUDIO CANAL".

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademarks and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the first element of the Policy (WIPO Overview 1.7).

The disputed domain name incorporates the entirety of the Complainant's marks and differs only by the addition of the letter "e". The top-level suffix .com is to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the trademarks of the Complainant as it is a technical requirement of registration (WIPO

Overview 1.11.1). The Panel finds that the disputed domain name is confusingly similar to the Complainant's marks.

The Complainant's contention on misspelling / typosquatting will be addressed by the Panel under the third element (bad faith registration and use).

The Panel therefore finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. RIGHTS OR LEGITIMATE INTERESTS

It is unnecessary to consider the second element in view of the Panel's conclusion under the third element concerning bad faith (WIPO Overview 4.2: "noting that a complainant must prevail on all three elements to succeed, in appropriate cases where a panel finds that one of the elements is clearly not met, the panel may consider it unnecessary to address the other elements").

C. BAD FAITH REGISTRATION AND USE

In the Panel's view, the Complainant has failed to establish that the disputed domain name has been registered and is being used by the Respondent in bad faith.

Under this element, in its Complaint the Complainant chose as categories of issues involved "constructive knowledge or prior knowledge of potential rights" and "non-use of the domain name", providing some additional explanations.

First of all, the Complainant states that the disputed domain name is confusingly similar to its prior distinctive trademarks. This statement (or at least its first part) is accepted by the Panel as established as already mentioned under the first element of paragraph 4(a) of the Policy.

In order to prove constructive knowledge or prior knowledge of potential rights, the Complainant contends that its subsidiary STUDIOCANAL is the leading studio in Europe for the production and distribution of movies and TV series operating directly in the three main European markets – France, the United Kingdom and Germany – as well as in Australia and New-Zealand. It also asserts that STUDIOCANAL is present (presumably indirectly) in the United States and China. However, no evidence has been provided by the Complainant regarding the extent of its services or reputation in the United States where the Respondent is located. The Panel notes that, while the national or regional trademark registrations of the Complainant satisfy the threshold requirement of having trademark rights for purposes of standing to file this UDRP case, the trademarks of the Complainant are not registered in the United States and there is no evidence submitted by the Complainant showing that such marks acquired distinctiveness or notoriety in such territory. This Panel might accept that the Complainant's trademarks have a certain reputation on the European market, in particular in France, but there is nothing before the Panel which proves that consumers in the US recognize the Complainant's trademarks as source indicator of the Complainant's products and services. Even if the Panel accepted that it would be entirely possible that the choice of a US registrant to register a domain name is prompted by a trademark well-known in France, no evidence has been given in this case to support that the Respondent's registration was intended to exploit the reputation of Complainant's or its marks. Hence, the Complainant has not satisfied the Panel that the Respondent knew or was likely to have been aware of the Complainant's trademarks on registration of the disputed domain name.

The Complainant has submitted a Google search on the expression <studiocanale> with several results related to the Complainant and it stated that "before this registration, the Respondent could have done a simple Google search and would have found the existence of the Complainant's trademark". This is not true. The results from a search performed on such well-known search engine depend on: search habits, the devices used and, most importantly, the location of the person performing the search (geolocation). The Complainant (just like as its representative) is located in France and contends to be the leading French audiovisual media group. Thus, it is acceptable that the majority of its search results will be related to the Complainant itself. A person located in the United States and performing a simple search on the same expression might get different results from a person located in France or elsewhere. For example, the Panelist is located in Italy, market on which the Complainant does not operate directly. In Italy the word "studio" has several different meanings: i) study intended

as learning ii) work intended as a project, iii) studio intended as a room in a house, iv) office or firm of a professional (such as doctor, architect, lawyer, consultant, etc.) or atelier of an artist, iv) television studio or radio station. The word "canale", further to the meanings in Italian of canal and channel, is a very common Italian surname. Hence, search results on the expression <studiocanale> in Italy relates to websites of firms of professionals with the surname "canale" (the first result is <studiocanale.eu> and no result on the first pages of the search results is related to the Complainant or to its trademarks). As mentioned above, it is not the duty of the Panel to establish which search results would an American get. The Google search submitted by the Complainant is not, in this Panel's view, sufficient to prove that the Respondent (located in the US) had constructive knowledge or prior knowledge of the Complainant's trademarks or business, nor to demonstrate that the Respondent was specifically targeting the Complainant with the registration of the disputed domain name.

The Panel hereby intends to address the unsupported allegation of the Complainant that this is a clear case of misspelling / typosquatting. The well-established UDRP case law considers as typosquatting a domain name which consists of a common, obvious, or intentional misspelling of a trademark. Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersion of other terms or numbers (WIPO Overview 1.9). In this case, even if the disputed domain name incorporates the entirety of the Complainant's trademarks and it differs from such marks by the addition of the letter "e", taken also into account the reasoning above regarding the Google search, the Complainant has provided no convincing evidence the addition of the letter "e" by the Respondent was an obvious or intentional misspelling of the Complainant's trademarks, aimed to confuse Internet users seeking or expecting the Complainant. Nor has the Complainant proved that such intention of the Respondent is corroborated by the website content to which the disputed domain name resolves (see below).

The Complainant contends that, by redirecting the domain name to the domain marketplace Domain Name Sales, "the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant’s trademark, which is an evidence of bad faith" under paragraph 4(b)(iv) of the Policy. Again, no evidence has been provided by the Complainant to establish that the Respondent was specifically targeting the Complainant and its marks, nor that the Respondent has engaged in the registration and the use of the disputed domain name to take unfairly advantage of the Complainant's trademarks. In this regard, the Complainant has made reference to a UDRP decision (WIPO Case No. D2018-2352, BNP Paribas Personal Finance v. MYDNS.STORE <cetelem.credit>), which, in the view of this Panel, dealt with different facts or circumstances and legal issues (inter alia identity of the domain name and the complainant's trademarks, use of a TLD related to the complainant's industry or business, location of the respondent in the same country of the complainant's location and, consequently, the application of the constructive knowledge or prior knowledge thesis on behalf of the respondent of the well-known rights of the Complainant). Therefore, such case law is to be disregarded in deciding this dispute.

While it is true that the disputed domain name resolves to the homepage of the domain marketplace Domain Name Sales (the Complainant submitted a screenshot of such website), the Panel notes that on such website the following script is displayed: "Get the best name for your website. The right domain name can change your life. We can help you find it. Enter domain or keyword". There is not only no evidence the Respondent registered or acquired the disputed domain name primarily for sale to the Complainant or to a competitor of the Complainant, for valuable consideration (paragraph 4(b)(i) of the Policy), but nor there is any evidence the disputed domain name is for sale to the world at large (WIPO Overview 3.1.1: "Generally speaking, panels have found that the practice as such of registering a domain name for subsequent resale (including for a profit) would not by itself support a claim that the respondent registered the domain name in bad faith with the primary purpose of selling it to a trademark owner (or its competitor)").

There is no evidence the Respondent has registered the disputed domain name in order to prevent the Complainant from reflecting its marks in a corresponding domain name (paragraph 4(b)(ii) of the Policy). Nor there is any evidence to support that the Respondent has registered and used the domain name primarily for the purpose of disrupting the business of the Complainant (paragraph 4(b)(iii) of the Policy).

The Panel, therefore, concludes the Complainant has failed to establish the third element of paragraph 4(a) of the Policy.

D. FINAL CONCLUSIONS

In the present case the Complainant has made contentions which are not sufficiently or adequately supported by the evidence submitted, in particular regarding the third element (bad faith registration and use). Although no Response has been filed, considered that the burden of proof rests with the Complainant and that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence” (i.e. a party should demonstrate to a panel’s satisfaction that it is more likely than not that a claimed fact is true - WIPO Overview 4.2), the Panel, based on the poorly supported and conclusory allegations of the Complainant, retains that the Complainant has not prevailed on all three elements of the paragraph 4(a) of the Policy and, therefore, rejects the Complaint.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **STUDIOCANALE.COM**: Remaining with the Respondent

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2020-01-21

Publish the Decision