

Decision for dispute CAC-UDRP-103747

Case number CAC-UDRP-103747

Time of filing 2021-04-21 09:15:03

Domain names canalplustv.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization GROUPE CANAL +

Complainant representative

Organization Nameshield (Laurent Becker)

Respondent

Name Aziz Sbai

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

Complainant states, and provides evidence to support, that it is the owner of “a large portfolio of trademarks including the wording ‘CANAL PLUS’.” In support thereof, Complainant cites French Reg. No. 1,218,827 (registered November 5, 1982), Int’l Reg. No. 509,729 (registered March 16, 1987), and Int’l Reg. No. 619,540 (registered May 5, 1994). These marks are referred to hereafter as the “CANAL PLUS Trademark.”

FACTUAL BACKGROUND

Complainant states that it 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”; that it has 20 million subscribers worldwide; and that it “offers various channels available on all distribution networks and all connected screens.” Complainant also states that it is the registrant of the domain names <canalplus.com> (created May 20, 2006) and <canal-plus.com> (created March 28, 1996).

The Disputed Domain Name was created on July 28, 2020 and does resolve to an active website.

Paragraph 4(a)(i): Complainant states, inter alia, that the Disputed Domain Name is confusingly similar to the CANAL PLUS Trademark because it “wholly incorporates” the CANAL PLUS Trademark and “[t]he addition of the abbreviation ‘TV’ (for Television) is not sufficient to avoid the likelihood of confusion with the Complainant, its trademarks and domain names.”

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in the Disputed Domain Name because, inter alia, “Respondent is not identified in the WHOIS database as the disputed domain name”; Respondent “is not related in any way with the Complainant”; “[t]he Complainant does not carry out any activity for, nor has any business with the Respondent”; “[n]either 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”; and “Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name.”

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, “the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.”

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 Policy were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Identical or Confusingly Similar: paragraph 4(a)(i):

Based upon the trademark registration cited by Complainant, it is apparent that Complainant has rights in and to the CANAL PLUS Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the CANAL PLUS Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., “canalplustv”) because “[t]he applicable Top-Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” WIPO Overview of WIPO Overview 3.0 (“WIPO Overview 3.0”), section 1.11.1.

Here, the Disputed Domain Name contains the CANAL PLUS Trademark in its entirety, adding the abbreviation “tv” for the word “television,” which is associated with the services described by the CANAL PLUS Trademark. As set forth in section 1.7 of WIPO Overview 3.0: “[W]here 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 UDRP standing.” And as set forth in section 1.8 of WIPO Overview 3.0: “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests: paragraph 4(a)(ii)

Complainant states, inter alia, that “Respondent is not identified in the WHOIS database as the disputed domain name”; Respondent “is not related in any way with the Complainant”; “[t]he Complainant does not carry out any activity for, nor has any business with the Respondent”; “[n]either 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”; and “Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name.”

WIPO Overview 3.0, section 2.1, states: “While the overall burden of proof in Policy proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the Policy.

Registered and Used in Bad Faith: paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the Policy may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the Policy: (i) circumstances indicating that the registrant has registered or the registrant has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the registrant’s website or location or of a product or service on the registrant’s website or location.

As set forth in section 3.3 of WIPO Overview 3.0:

“From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding.”

“While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement),

and (iv) the implausibility of any good faith use to which the domain name may be put.”

This section is derived, of course, largely from the landmark decision on passive holding in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

As applied to the instant proceeding, the Panel finds that the CANAL PLUS Trademark is highly distinctive; that, Respondent has failed to submit a response; and that it is implausible there would be any good faith use to which the domain name may be put.

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. CANALPLUSTV.COM: Transferred

PANELLISTS

Name	Douglas M. Isenberg
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DATE OF PANEL DECISION	2021-05-25
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Publish the Decision