

Decision for dispute CAC-UDRP-103847

Case number CAC-UDRP-103847

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Domain names canalplus.digital

Case administrator

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

Complainant

Organization GROUPE CANAL +

Complainant representative

Organization Nameshield (Enora Millocheau)

Respondent

Name qsfqsqsfqs sqfqsf

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

In this proceeding, the Complainant relies on the following trademarks:

- the international trademark CANAL PLUS (word) No. 509729, registered on March 16, 1987 and renewed;
 - the international trademark CANAL PLUS (word) No. 619540, registered on May 30, 1994 and renewed.
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FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

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 22 million of subscribers worldwide, the Complainant

offers various channels available on all distribution networks and all connected screens.

The Complainant owns a large portfolio of trademarks including the wording "CANAL PLUS" and it also owns multiple domain names consisting of the wording "CANAL PLUS" such as <canalplus.com> and <canal-plus.com>.

The disputed domain name was registered on May 17, 2021.

The Complainant states that the disputed domain name is identical to the Complainant's trademark CANAL PLUS as its mark is included in the disputed domain name in its entirety, without any addition or deletion.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent is not identified in the WHOIS database by the disputed domain name.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he/she 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.

Furthermore, the disputed domain name resolves to an error page and the Complainant contends that the 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. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant states that the disputed domain name is identical to its distinctive trademark CANAL PLUS and the disputed domain name was registered many years after the Complainant had established a strong reputation and goodwill in its marks.

The Complainant adds that since the Respondent, is from the same country as the Complainant (France), he/she could not have ignored the Complainant's trademarks CANAL PLUS at the moment of the registration of the disputed domain name, which cannot be a coincidence.

The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and 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, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

According to the Complainant another evidence of Respondent's bad faith is the fact that the disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any e-mail emanating from the disputed domain name could not be used for any good faith purpose.

Thus, the Complainant asserts that the Respondent has registered and is using the disputed domain name in bad faith.

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 with Complainant's trademark

The Complainant is the owner of numerous "CANAL PLUS" trademark registrations effective in various jurisdictions.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), paragraph 1.2.1: "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".

The disputed domain name fully incorporates the "CANAL PLUS" mark of the Complainant without any additions or alterations.

The Panel agrees that the disputed domain name is identical with the Complainant's trademarks, or, at least, highly similar.

The gTLD suffix "digital" is to be disregarded under the confusing similarity test.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

- (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
- (ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110 and CAC Case No. 101284.

The disputed domain name was registered on May 17, 2021 and is not actively used.

The Complainant states that the Respondent is not related in any way to the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent and 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 Complainant further contends that the Respondent did not make any use of the disputed domain name since its registration.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and Vertical Solutions Management, Inc. v. webnet-marketing, inc., FA 95095, National Arbitration Forum).

The Complainant has made out a prima facie case and there is no evidence on the record that would demonstrate any possible rights or legitimate interests of the Respondent.

The Panel, therefore, finds that the Complainant satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.

The website by the disputed domain name is inactive.

There is a general agreement that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see par. 3.3 of WIPO Overview 3.0 and Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

One has to look at the circumstances of a case taking into account, in particular, the following:

- (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 (see e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; "Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc., WIPO Case No. D2017-0246 and par. 3.3 of WIPO Overview 3.0).

Other circumstances of a particular case may also be relevant in assessing Respondent's bad faith, i.e. geographic proximity of the parties.

The Complainant's "CANAL PLUS" trademark is widely-known and distinctive and had been registered long before registration of the disputed domain name.

Previous UDRP panels found Complainant's "CANAL PLUS" trademark "highly distinctive", "distinctive and well-known" and having "the international reputation" (see CAC Case No. 103747, CAC Case No. 103424 and Groupe Canal+ v. Hong Huo, WIPO Case No. D2020-2252).

Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see par. 3.1.4 of WIPO Overview 3.0).

The disputed domain name fully incorporates the Complainant's highly distinctive trademark and is identical or, at least, highly similar with the Complainant's mark.

The Respondent failed to respond and provide any explanations for choosing the disputed domain name that fully incorporates the Complainant's well-known trademark.

The Panel also needs to add that according to the whois record, the Respondent is based in France, the country of the Complainant and in these circumstances it is extremely unlikely that the Respondent was unaware of the Complainant and its "CANAL PLUS" trademarks.

Besides, not only the Respondent used a privacy shield to conceal his/her true identity, the Respondent also clearly provided false personal and contact details to the registrar.

This is yet another indication of Respondent's bad faith.

Taking into account all of the above it appears that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. CANALPLUS.DIGITAL: Transferred

PANELLISTS

Name	Igor Motsnyi / Mocni Konsalting doo
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DATE OF PANEL DECISION 2021-07-02

Publish the Decision
