

Decision for dispute CAC-UDRP-105672

Case number	CAC-UDRP-105672
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Time of filing	2023-08-01 09:42:35
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Domain names	vod-canalplus.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	GROUPE CANAL +
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	Milen Radumilo
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant several trademarks including the wording “CANAL PLUS”, such as:

- The French trademark “CANAL PLUS” n° 1218827, registered on November 5, 1982;
- The International trademark “CANAL PLUS” n° 509729, registered since March 16, 1987;
- The International trademark “CANAL PLUS” n° 619540, registered since May 5, 1994

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 25.5 million of subscribers worldwide, the Complainant offers various channels available on all distribution networks and all connected screens.

Furthermore, the Complainant owns multiple domain names consisting in the wording “CANAL PLUS” such as <canalplus.com> registered since 2006 and <canal-plus.com> registered since 1996.

The disputed domain name was registered on November 30, 2022 and points to a parking page with commercial links related to the Complainant's activities, and displaying a general offer to buy the domain name.

PARTIES CONTENTIONS

COMPLAINANT:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The disputed domain name is confusingly similar to the Complainant's trademark "CANAL PLUS". Indeed, the trademark is included in its entirety.

The addition of the term "VOD" (meaning "Video on Demand") is not sufficient to avoid the likelihood of confusion with the Complainant and its trademarks.

Furthermore, Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names associated.

Thus, the disputed domain name is confusingly similar to the Complainant's trademark.

1. The Respondent has no rights or legitimate interests in respect of the domain name(s);

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 domain name <vod-canalplus.com> 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 on parking page with commercial links related to the Complainant's activities. The Complainant contends that it is not legitimate non-commercial or fair use of the disputed domain name. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

Finally, a general offer to "buy the domain" ("Acheter ce domaine.") is displayed on the website. The Complainant contends this general offer to sell the disputed domain name evidences the Respondent's lack of rights or legitimate interest.

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain name.

1. The domain name was registered and is being used in bad faith.

The Complainant states that the disputed domain name is confusingly similar to its distinctive trademark "CANAL PLUS".

Besides, all the Google results for the terms "VOD CANAL PLUS" refer to the Complainant and especially its website 'https://vod.canalplus.com'.

Consequently, the Respondent 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.

Furthermore, the disputed domain name resolves to a parking page with commercial links related to the Complainant's activities. The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith.

Finally, by displaying the message "Buy this domain" ("Acheter ce domaine"), the Complainant contends that the Respondent has registered the disputed domain name only in order to sell it back for out-of-pockets costs, which evinces bad faith registration and use.

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

RESPONDENT:

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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 have been met, and there is no other reason why it would be unsuitable for providing the Decision.

PRINCIPAL REASONS FOR THE DECISION

a. Identical or Confusingly Similar

First, the Panel is satisfied that the Complainant has shown it owns rights in the “CANAL PLUS” trademarks, with registration and evidence provided dating the trademark registration back to at least 1982.

Turning to analyze if there is a confusing similarity between the disputed domain name and the trademark, the Panel notes, based on the record at hand, that the disputed domain name reproduces the trademark in its totality, namely "CANAL PLUS", with an addition of three preceding letters, namely “VOD” and a hyphen. The addition of these three letters heightens the appearance of confusing similarity with the trademark "CANAL PLUS", because “VOD” is a commonly known term that seems to allude to “video on demand”, one of the activities of the Complainant. A more complete analysis of this will be conducted in the elements below, but suffice to say that in what relates to the first element, the verbatim reproduction of the trademark is enough to find confusing similarity between the disputed domain name and the Complainant's trademarks, and the slight difference is immaterial and therefore not enough to dispel the confusing similarity between the trademark and the disputed domain name. As mentioned earlier, it may even enhance it, as it will be discussed below.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

b. Rights or Legitimate Interests

Based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must turn to the uncontested facts.

The uncontested facts indicate that a) the Respondent is not commonly known by the disputed domain name; b) the Respondent is not related to the Complainant; c) the Respondent is not authorized to carry out any business activity for the Complainant; d) the Respondent has no license or authorization to use the trademarks; e) the Respondent is using the disputed domain name in relation to a parking page with commercial links related to the Complainant's activities; f) the Respondent has no demonstratable plans to use the disputed domain name legitimately beyond what appears general offer to buy the disputed domain name.

Based on the above, the record at hand, and on the balance of probability, and considering that the Respondent has failed to respond to the Complainant's contentions, the Respondent has consequently not rebutted the prima facie case, as described in paragraph 2.1 of WIPO 3.0 Overview.

The above fact pattern on the balance of probabilities, and in conjunction with the use of the term “VOD” in the disputed domain name indicates, if nothing else, a likely intention of confusing Internet users with a likely implied association with the Complainant. However, this will be subject of further analysis under the element below.

The evidence on record leads the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed

domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

c. Registered and Used in Bad Faith

Per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. This is further reinforced by the fact that "CANAL PLUS" trademark 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.

Additionally, this conclusion is supported by the fact that the Respondent seems to evoke a connection to the Complainant's trademark by including the term "VOD" in the disputed domain name, which appears to refer to an activity of the Complainant and appears to misrepresent a link between the disputed domain name and the Complainant. In this case, as supported by the record at hand, the Respondent appears to have targeted the Complainant on the balance of probabilities.

All the preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

d. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **vod-canalplus.com**: Transferred

PANELLISTS

Name	Rodolfo Rivas Rea
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DATE OF PANEL DECISION	2023-08-22
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Publish the Decision
