

ADMINISTRATIVE PANEL DECISION

Pathe Marques v. Super Privacy Service LTD c/o Dynadot / Zambak Kara,
Susan Cemal
Case No. D2022-0882

1. The Parties

The Complainant is Pathe Marques, France, represented by Cabinet Delucenay & Staeffen, France.

The Respondents are Super Privacy Service LTD c/o Dynadot, United States of America (“United States”) / Zambak Kara and Susan Cemal, Turkey.

2. The Domain Name and Registrar

The disputed domain names <pathegames.com>, <pathegame.com> and <pathe-games.com> are registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

A Complaint in respect of the disputed domain name <pathegames.com> was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2022. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with that disputed domain name. On March 15, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 15, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 16, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint and the proceedings commenced on March 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 7, 2022.

On March 30, 2022 the Complainant filed request to add the disputed domain names <pathegame.com> and <pathe-games.com> to the administrative proceeding.

The Center appointed Steven A. Maier as the sole panelist in this matter on April 12, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

On May 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the two additional disputed domain names. On May 6, 2022, the Registrar transmitted by email to the Center its verification response disclosing an additional registrant and contact information for the two additional disputed domain names which differed from the named Respondent and contact information in the Complaint. On May 9, 2022, the Panel issued Procedural Order No. 1 inviting further submissions from the Parties. The Complainant submitted a supplementary filing accordingly on May 13, 2022. The Respondents did not submit any response.

4. Addition of Domain Names

The Complainant applies to add the two disputed domain names, <pathegame.com> and <pathe-games.com>, to this proceeding. Both of these disputed domain names were registered on March 18, 2022, being a date after the Complaint was filed and indeed the same date that the Center notified the Respondent of the proceeding.

The Complainant contends that the Respondents are the same person or related entities and has registered these additional disputed domain name in order to game or frustrate this proceeding.

As observed in section 4.12.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"):

"Except in limited cases where there is clear evidence of respondent gaming/attempts to frustrate the proceedings (e.g., by the respondent's registration of additional domain names subsequent to complaint notification), panels are generally reluctant to accept such requests because the addition of further domain names would delay the proceedings (which are expected to take place with due expedition). Moreover, a panel declining such request would not prevent the filing of a separate complaint where such additional domain names may be addressed.

In those cases where panels would grant such a request, the complainant would need to hold relevant trademark rights and the proposed additional domain names would need to be *prima facie* registered by the same or related respondent. Moreover, in the event a panel would grant such a request, it may also order partial or full re-notification of the proceeding (which may impact case timelines)."

The Complainant argues that this is a case where clear evidence of the Respondents' conduct exists and points in particular to the following factors:

- (1) The similarity of all three of the disputed domain names, each of which comprises the Complainant's trademark PATHE (see below) together with the term "game" or "games".
- (2) The fact that both the additional disputed domain names were registered on the same date that the Center notified the Respondent of this proceeding.
- (3) The fact that all three disputed domain names share a common registrar, namely Dynadot LLC.
- (4) The fact that the registrant name in respect of all three of the disputed domain names is the same, *i.e.* Super Privacy Service LTD c/o Dynadot (albeit a privacy shield identity).

(5) The fact that all three of the disputed domain names have resolved to a website at “www.dan.com” offering the disputed domain names for sale and inviting enquiries as to the price, but with no indication as to that price.

Pursuant to Procedural Order No. 1, the Respondents were provided an opportunity to dispute the contention that all three of the disputed domain names were under their common control, and if so to file a Response in respect of the two additional disputed domain names. However, no reply was received from the Respondent.

In the light of these matters, the Panel can reach no reasonable conclusions other than that all three of the disputed domain names are under common control and that the additional two disputed domain names were registered in order to game or frustrate this proceeding. Accordingly, the Panel will refer collectively to the “Respondent” going forward.

The Panel therefore directs that the disputed domain names <pathegame.com> and <pathe-games.com> be added to the proceeding and will consider all three of the disputed domain names in the remainder of this decision.

5. Factual Background

The Complainant is a company registered in France. It is an entity forming part of the Pathé Group, which is a major film production and distribution organization.

The Complainant is the owner of various registrations for the trademark PATHE, including for example European Union Trademark registration number 008463391 for the word mark PATHE, registered on June 28, 2010, for goods and services in various classes, including “games and playthings” in International Class 28.

On February 8, 2022, the Complainant filed an application for a figurative European Union Trademark including the words PATHÉ GAMES under the application no. 018649910 for the goods and services in International Classes 28 and 41.

The disputed domain name <pathegames.com> was registered on February 8, 2022. The disputed domain names <pathegame.com> and <pathe-games.com> were registered on March 18, 2022.

According to evidence submitted by the Complainant, all three of the disputed domain names have resolved to web pages at “www.dan.com” offering the respective disputed domain names for sale and inviting enquiries as to the price.

5. Parties’ Contentions

A. Complainant

The Complainant states that Pathé Group owns cinema chains and television networks across Europe and is the world’s second oldest film company. It claims revenues of EUR 946 million in 2019 with 4,896 employees in five countries. It operated 1,339 screens over 133 cinemas in 2019 and has a portfolio of over 800 films. The Complainant submits that it also enjoys international exposure, for example having a partnership with the Metropolitan Opera in New York where its films are regularly shown. The Complainant submits that, as a result of these matters, its mark PATHE is part of the global entertainment landscape and enjoys a strong reputation in that field.

The Complainant submits that the disputed domain names are confusingly similar to its PATHE trademark. It contends that its trademark is reproduced in full, followed by the descriptive term “game” or “games”, which

does not prevent the disputed domain names from being similar to its trademark.

The Complainant further submits that the disputed domain names are virtually identical to its trademark application for PATHÉ GAMES, the disputed domain name <pathegames.com> having been registered on the same date that trademark application was filed.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain names. It states that it has never authorized the Respondent to use its PATHE trademark and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain names. The Complainant submits that the Respondent's only purpose in registering the disputed domain names can have been to sell them to the Pathé Group or to the general public.

The Complainant submits that the disputed domain names have been registered and are being used in bad faith. The Complainant points to the fact that the disputed domain name <pathegames.com> was registered on the same day as it filed its European Union Trademark application for PATHÉ GAMES and that such applications typically become visible within a few hours of filing. The Complainant contends that this is therefore a case of the Respondent seeking to capitalize on the Complainant's nascent trademark rights. The Complainant adds that it had itself registered the domain name <pathe.games> on November 26, 2021.

The Complainant contends that its trademark PATHE is widely known in any event and that the Respondent was no doubt aware of that trademark and registered the disputed domain name <pathegames.com> in order to take unfair advantage of the goodwill attaching to that trademark.

The Complainant submits that the Respondent's registration of the additional disputed domain names, <pathegame.com> and <pathe-games.com>, were obviously registered by the Respondent in bad faith and specifically in response to this administrative proceeding.

The Complainant requests the transfer of the disputed domain names.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

7. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain names are identical or confusingly similar to a trademark 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it is the owner of registered trademark rights in the mark PATHE. Each of the disputed domain names wholly incorporates that mark, together with the term "game" or "games", which do not prevent the disputed domain names from being confusingly similar to the Complainant's trademark. The Panel therefore finds that all of the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. However, the Respondent has failed to file any Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain names, or evidence of rights or legitimate interests on its part in the disputed domain names, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise. The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of any of the disputed domain names.

C. Registered and Used in Bad Faith

The Panel accepts the Complainant's evidence that the Respondent registered the disputed domain name <pathegames.com> on the same day that the Complainant filed its application for the European Union Trademark PATHÉ GAMES. In the absence of any explanation from the Respondent, the Panel readily infers that the Respondent was aware of that application (and/or the Complainant's earlier registration of the domain name <pathe.games>) and registered that disputed domain name in order to take unfair advantage of the Complainant's nascent trademark rights in that mark (see *e.g.* section 3.8.2 of the [WIPO Overview 3.0](#)). The Panel infers in any event that the Respondent was aware of the Complainant's distinctive and widely-known PATHE trademark and registered that disputed domain name in order to take unfair advantage of the Complainant's goodwill attaching to that trademark.

The Panel finds further that the Respondent registered the additional disputed domain names, <pathegame.com> and <pathe-games.com>, in response to the Complainant's commencement of this administrative proceeding and with the intention of gaming or frustrating the proceeding.

Based on the Respondent's sole use of the disputed domain names to offer the disputed domain names for sale, at an initially undisclosed price, the Panel further concludes that the Respondent registered the disputed domain names primarily for the purpose of selling, renting, or otherwise transferring the disputed domain names to the Complainant for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain names (paragraph 4(b)(i) of the Policy).

The Panel therefore finds that all of the disputed domain names have been registered and are being used in bad faith.

8. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names, <pathegames.com>, <pathegame.com>, and <pathe-games.com>, be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: May 23, 2022