

ADMINISTRATIVE PANEL DECISION

Pathe Marques v. Milen Radumilo

Case No. D2022-2778

1. The Parties

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

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <pathe.club> is registered with Communigal Communications Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 28, 2022. On July 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 4, 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 August 4, 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 August 8, 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 August 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 30, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 1, 2022.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on September 7, 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.

4. Factual Background

The Complainant is a company incorporated under the laws of France since 1999. It belongs to the Pathé Group, which is a major film production and distribution company, owning a number of cinema chains through its subsidiary “Les Cinémas Pathé Gaumont” and television networks across Europe. Today the Pathé Group is one of the leading cinema network in France and in Europe, with 133 cinemas and 1339 screens in 2019. The Pathé Group has a revenue of EUR 946 million, with 4,896 employees in 5 countries in 2019.

The Complainant is the holder of the following registrations of the PATHE trademark:

- European Union Trademark registration No. 008463391 for PATHE filed on October 12, 2009, registered on June 28, 2010, for goods in classes 9, 16, 25, and 28, and services in classes 35, 38, 41, 42, and 43.
- International Trademark registration No. 715871 for PATHÉ ! (word & device), registered on May 17, 1999, for goods in classes 9, 14, 16, 25, and 28, and services in classes 35, 38, 41, and 42.

Furthermore, the Complainant operates the domain name <pathe.com> which was created on August 19, 1997.

The disputed domain name <pathe.club> was created on May 27, 2022, and directs to a website showing a parking page containing various commercial or sponsored pay-per-click (“PPC”) links to third party websites.

The Respondent appears to be an individual located in Romania. There have been over 130 decisions against it under the Policy.

5. Parties’ Contentions

A. Complainant

Identical or Confusingly Similar

The Complainant contends that the disputed domain name and the PATHE trademark are confusingly similar.

According to the Complainant’s contentions, the device elements included in the PATHE trademark are incapable of representation in a domain name, the identical reproduction of the verbal element of the Complainant’s PATHE trademark is sufficient to conclude to the identity with the disputed domain name. The generic Top-Level Domain (“gTLD”) “.club” in the disputed domain name does not affect the determination that the disputed domain name is identical or confusingly similar to the Complainant’s PATHE trademark.

No rights or legitimate Interests

The Complainant claims that the Respondent does not have any rights or legitimate interests in the disputed domain name and that the Complainant has no connection with the Respondent.

The Complainant contends that the Respondent is not commonly known by the disputed domain name. Nor is the Respondent otherwise associated with it, or any similar name, whether through a family name, business activity, or other legitimate activity.

The Complainant further contends that the Respondent is not using nor preparing to use the disputed domain name in connection with a *bona fide* offering of goods or services and is not making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name resolves to a parking

page with various headings and commercial links which are related to cinema and movies, and such use of the disputed domain name by the Respondent does not constitute either *bona fide* use or a legitimate noncommercial or fair use of the disputed domain name.

Registered and used in bad faith

The Complainant submits that the Respondent registered and is using the disputed domain name in bad faith. The Respondent must have been aware of the Complainant's PATHE trademark when it registered the disputed domain name. The Complainant contends that the disputed domain name is used with the view of attracting Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademark.

The Complainant also provides a list of over 130 UDRP decisions in which the Respondent was the subject of a complaint. The Complainant contends that previous activities of the Respondent provide an additional indication of bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its Decision on the statements and documents submitted and in accordance with the Policy and the Rules. Under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as a *prima facie* evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint. See section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Complainant submitted evidence that the PATHE trademark enjoys protection under international and regional trademark registrations. Thus, the Panel finds that the Complainant has proved that it has rights in the PATHE trademark.

The disputed domain name incorporates the Complainant's PATHE trademark in its entirety with no alternations and no additional elements.

Under section 1.7 of the [WIPO Overview 3.0](#), 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 UDRP standing. The standing (or threshold) test for confusing similarity involves

a reasoned but relatively straightforward comparison between a complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top Level Domain ("TLD") in a domain name is viewed as a standard registration requirement and as such should be disregarded under the first element confusingly similar test.

The Panel finds that the disputed domain name <pathe.club> is identical to the Complainant's PATHE trademark and that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

Based on the Complainant's contentions, the Respondent is not a licensee of, or otherwise affiliated with, the Complainant, and has not been authorized by the Complainant to use its PATHE trademark.

Based on the case records, the Panel finds that there is no evidence that the Respondent has been commonly known by the disputed domain name, and there is no similarity or association between the name of the Respondent and the disputed domain name, which could demonstrate rights or legitimate interests of the Respondent. See, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. [D2008-0642](#).

According to section 2.9 of the [WIPO Overview 3.0](#), applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users.

Based on the evidences submitted, the Panel has established that the disputed domain name resolves to a parking page with various headings and commercial links which are related to cinema and movies. These topics are clearly similar to the Complainant's business activity under the PATHE trademark.

Respectively, the disputed domain name is being used in connection with parked page displaying PPC advertisements that may lead Internet users to competitors of the Complainant, which clearly does not characterize a *bona fide* offering of goods or services under the Policy.

Furthermore, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly and absent specific allegations of the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

There are several ways that a complainant can demonstrate that a domain name was registered and used in bad faith. For example, paragraph 4(b)(iv) of the Policy states that bad faith can be shown where "by using the domain name [respondent has] intentionally attempted to attract, for commercial gain, Internet users to

[respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or of a product or service on [the] web site or location".

According to section 3.1.1 of the [WIPO Overview 3.0](#) the circumstances which may indicate that a respondent's intent in registering a disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trademark include, alone or together: (i) the respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the complainant's mark, (iii) a pattern of abusive registrations by the respondent, (iv) website content targeting the complainant's trademark, e.g., through links to the complainant's competitors, (v) threats to point or actually pointing the domain name to trademark-abusive content, (vi) threats to "sell to the highest bidder" or otherwise transfer the domain name to a third party, (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name, (viii) a respondent's request for goods or services in exchange for the domain name, (ix) a respondent's attempt to force the complainant into an unwanted business arrangement, (x) a respondent's past conduct or business dealings, or (xi) a respondent's registration of additional domain names corresponding to the complainant's mark subsequent to being put on notice of its potentially abusive activity.

Under section 3.1.4 of the [WIPO Overview 3.0](#) panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Based on the evidence submitted by the Complainant, the Panel shares the view of previous UDRP panels and also finds that the Complainant's PATHE trademark is inherently distinctive and the Complainant has provided evidences of its repute. (See *PATHE MARQUES v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1066](#); *Pathe Marques v. Admin*, WIPO Case No. [D2021-1703](#); *Pathe Marques v. Super Privacy Service LTD c/o Dynadot / Zambak Kara, Susan Cemal*, WIPO Case No. [D2022-0882](#); *Pathe Marques v. BMCA / Privacy service provided by Withheld for Privacy ehf / Gamv Warler*, WIPO Case No. [D2022-1430](#)).

The Panel has established that the disputed domain name is identical to the Complainant's PATHE trademark, and which trademark has been registered well before the disputed domain name. In addition, the parking page, to which the disputed domain name directs, contains PPC headings that all direct to websites of businesses offering services in the cinema industry.

Given the reputation of the PATHE trademark and the unlikelihood of the Respondent selecting the disputed domain name for registration by chance, the Panel infers that the registration of the disputed domain name intended to draw income from the improper use of the connection to the Complainant was registration in bad faith. (See *LEGO Juris A/S v. Floyd Goddard/ Oneandone, Private Registration*, WIPO Case No. [D2010-0544](#), the panel stated: "The Panel, in accordance with previous decisions issued under the UDRP, is of the opinion that actual knowledge of the Complainant's trademarks and activities at the time of the registration of the disputed domain may be considered an inference of bad faith.")

Thus, this Panel draws the inference from the conduct of the Respondent as to bad faith registration in this case.

Further, both the registration and use of the disputed domain name in bad faith can be found pursuant to Policy paragraph 4(b)(iv) in view of the following factors:

- (i) the choice to retain a privacy protection service to conceal its true identity;
- (ii) the absence of any response to the Complaint, failing thereby to invoke any circumstance which could demonstrate good faith in the registration or use of the disputed domain names;
- (iii) the Respondent is using the disputed domain name in connection with PPC advertisements, leading Internet users to competitors of the Complainant, creating a likelihood of confusion or undue association in Internet;

- (iv) the implausibility of any good faith use to which the disputed domain name may be put;
- (v) the fact that the Respondent has engaged in what appears to be a pattern of bad faith conduct, having registered dozens of disputed domain names targeting the trademarks of third parties in past UDRP cases.

For the sake of completeness, the Panel should add that the fact that links on the website to which the disputed domain name resolves might be automatically generated does not prevent a finding of bad faith under the Policy (section 3.5 of the [WIPO Overview 3.0](#)).

The Panel, therefore, concludes that the disputed domain name was registered and is being used in bad faith. The Complainant has therefore made out the requirements of paragraph 4(a)(iii) of the Policy.

7. 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 name <pathe.club> be transferred to the Complainant.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: September 21, 2022