

## **ADMINISTRATIVE PANEL DECISION**

Pathe Marques v. Host Master, Transure Enterprise Ltd  
Case No. D2023-1909

### **1. The Parties**

The Complainant is Pathe Marques, France, represented by ARDAN, France.

The Respondent is Host Master, Transure Enterprise Ltd, United States of America (“US”).

### **2. The Domain Name and Registrar**

The disputed domain name <homepathe.com> (“Disputed Domain Name”) is registered with Above.com PTY LTD. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 27, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 2, 2023, 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 (Redacted for Privacy), and contact information in the Complaint. The Center sent an email communication to the Complainant on May 3, 2023, 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 May 5, 2023.

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 May 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 14, 2023.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on July 21, 2023. 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 in 1999. The Complainant belongs to the Pathé Group (“PATHE”), a film production and distribution company, which owns a number of cinema chains and television networks across Europe. The Complainant owns word and figurative trademarks for or containing PATHE (“the Complainant’s Trademark”) around the globe.

The relevant trademark registrations include, *inter alia*, the European Union Trademark (“EUTM”)No. 18753041 for PATHÉ HOME in Classes 9, 38, 41, and 42, registered on January 10, 2023, EUTMNo. 8463391 for PATHE in Classes 9, 16, 25, 28, 35, 38, 41, 42, 43 registered on June 28, 2010, and International Registration No. 715871 for the figurative mark of PATHÉ! in Classes 9, 16, 25, 28, 35, 38, 41, and 42 registered on May 17, 1999. Apart from the above trademark registrations, the Panel notes that the Complainant also holds US Trademark Registration No. 5793531 for PATHÉ in Class 41 registered on July 2, 2019, where the Respondent is apparently located.

The Complainant’s Trademark is also fully incorporated in the Complainant’s domain names <pathe.fr> and <pathe.com> (the “Complainant’s Domain Names”), which resolve to the Complainant’s websites at “www.pathe.fr” and “www.pathe.com” respectively.

The Disputed Domain Name was registered on March 30, 2023, which is almost 25 years after the Complainant first registered the Complainant’s Trademark. According to the Complainant, the Disputed Domain Name resolved to a parked page comprising Pay-Per-Click (“PPC”) advertising links to platform offering movie tickets for the Complainant and its competitors, sale of DVDs and Blu-rays, and discounted offers on movie streaming websites. As of the date of this decision, the Panel notes that the Disputed Domain Name also features PPC links unrelated to the Complainant’s business.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant’s primary contentions can be summarized as follows:

- (a) The Disputed Domain Name is identical or confusingly similar to the Complainant’s Trademark. The Complainant’s Trademark is reproduced in its entirety in the Disputed Domain Name. The Disputed Domain Name is also an inversion of the two elements of the Complainant’s PATHÉ HOME trademark.
- (b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent has no right to use the Complainant’s Trademark as part of a domain name or otherwise. The PPC links do not represent a *bona fide* offering of goods or services.
- (c) Both the Respondent’s registration and use of the Disputed Domain Name establish its bad faith. Given the goodwill and history of the Complainant’s Trademark, the Respondent must have been fully aware of the existence of the Complainant’s rights in the Complainant’s Trademark when the Respondent registered and used the Disputed Domain Name. The Respondent’s use of the Disputed Domain Name does not represent a *bona fide* offering where PPC links on the Respondent’s website compete with or capitalize on the reputation and goodwill of the Complainant’s Trademark or otherwise mislead Internet users. The Complainant notes that the Respondent has activated mail exchange (“MX”) records for the Disputed Domain Name, which may indicate that the Respondent intends to engage in or has engaged in a phishing activities. Moreover, the Respondent has been party to more than 200 previous UDRP domain name disputes. Therefore, the Respondent has registered and used the Disputed Domain Name in bad faith.

## B. Respondent

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

## 6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) The Disputed Domain Name is 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 Name; and
- (iii) The Disputed Domain Name has been registered and is being used by the Respondent in bad faith.

### A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations such as those listed in Section 4.

The Complainant's Trademark is wholly incorporated in the Disputed Domain Name. Whilst the Disputed Domain Name contains the word "home", the Panel notes the Disputed Domain Name is merely an inversion of the two words in the Complainant's PATHÉ HOME trademark. Use of the word "home" does not prevent a finding of confusing similarity between the Disputed Domain Name and the Complainant's Trademark. Furthermore, it is well established that the generic Top-Level Domain ("gTLD"), ".com" in this case, may be disregarded. See sections 1.8 and 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark. There is no relationship between the Complainant and the Respondent, which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a disputed domain name, the respondent then carries the burden of producing evidence demonstrating that it has rights or legitimate interests in the disputed domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent did not submit a Response. The fact that the Respondent did not submit a Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Names by demonstrating any of the following:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel agrees with the Complainant that there is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or name corresponding to the Disputed Domain Name, is in connection with a *bona fide* offering of goods or services. The PPC links at issue do not represent a *bona fide* offering since such links compete with or capitalize on the reputation and goodwill of the Complainant's Trademark or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#).

No evidence has been provided to show that the Respondent has trademarks rights corresponding to the Disputed Domain Name or that the Respondent has become known by the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Disputed Domain Name incorporates the Complainant's Trademark with the addition of the word "home" in front of the Complainant's Trademark, which is in fact an inversion of the Complainant's PATHÉ HOME trademark. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "pathe" relate to the Complainant's services and/or third party websites providing information relating to the Complainant's services. Therefore, the Panel agrees with the Complainant that the Respondent must have been aware of the Complainant and its rights in the Complainant's Trademark when registering and using the Disputed Domain Name.

In addition, the Panel finds that the following factors further support a finding that the Disputed Domain Name was registered and has been used by the Respondent in bad faith:

- (i) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that the Disputed Domain Name is confusingly similar to the Complainant's Trademark. It can be inferred that the Respondent used the Disputed Domain Name to earn click through revenue from the misdirection of Internet users to the Respondent's website caused by the confusing similarity of Disputed Domain Name to the Complainant's Trademark (see *Société Louis Delhaize Financière et de Participation (DELFI PAR) v. Privacy service provided by Withheld for Privacy ehf /Vallee Virginie*, WIPO Case No. [D2021-4126](#)). Such circumstances are evidence of registration and use of the Disputed Domain Name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. Also, as discussed above, the Respondent lacks rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)).

- (ii) The presence of MX records suggests that mail servers have been configured, which may indicate that the Respondent intends to engage in or has engaged in a phishing or fraudulent scheme. (See *International Business Machines Corporation v. Jan Everno*, WIPO Case No. [D2023-0778](#)).
- (iii) The Respondent failed to respond to the Complainant's contentions and has provided no evidence of this actual or contemplated good faith use of the Disputed Domain Name.
- (iv) The Respondent has a history of cybersquatting. In *MBK Rental Living, LLC v. Host Master, Transure Enterprise Ltd*, WIPO Case No. [D2023-1914](#), the Panel found that the "Respondent is a well-known cybersquatter. Since 2008, transfer has been ordered against Respondent in hundreds of other UDRP proceedings filed with the Center."

In the circumstances, the Panel finds that the Respondent registered and is using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

## 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, <homepathe.com> be transferred to the Complainant.

*/Gabriela Kennedy/*

**Gabriela Kennedy**

Sole Panelist

Date: August 4, 2023