

ADMINISTRATIVE PANEL DECISION

Pathe Marques v. Milen Radumilo
Case No. D2023-3285

1. The Parties

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

The Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <cinemathe.com> is registered with <Domainroyale.com> LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 31, 2023. On July 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 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 (Perfect Privacy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 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 August 8, 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 August 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 31, 2023.

The Center appointed Halvor Manshaus as the sole panelist in this matter on September 5, 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, established in 1999, and a member of the Pathe Group. The Pathe Group is a major film production and distribution company, owning several cinema chains through its subsidiary “Les Cinémas Pathé Gaumont” and television networks across Europe.

Today, the Pathe Group is a leading cinema network in continental Europe with 129 cinemas and 1306 screens and is well known. In 2022, the Pathe Group had a revenue of 845 million Euros with 2827 employees in six countries.

The Complainant is the owner of several trademarks containing the words PATHE in several jurisdictions, including the following:

- The European Union trademark PATHE (registration no. 008463391 registered on June 28, 2010 for several goods and services in classes 9, 16, 25, 28, 35, 38, 41, 42 and 43).
- The International figurative trademark PATHÉ! (registration no. 715871 claiming protection in, *inter alia*, Denmark, United Kingdom, African Intellectual Property Organization, Türkiye, Poland, Portugal, Czech Republic and Slovakia registered on May 17, 1999 duly for several goods and services in classes 9, 14, 16, 25, 28, 35, 38, 41 and 42).

The Complainant further holds domain names <pathe.com> and <pathe.fr> containing the trademark PATHE.

The disputed domain name was registered on December 9, 2022, and diverts to a parking website with pay-per-clicks (“PPC”) links related to cinema and movies.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Complainant holds trademark rights to PATHE and that it has acquired a reputation under the name. Further, the Complainant argues that the disputed domain name is confusingly similar to the Complainant’s trademark as it has highly similar verbal elements as the disputed domain name reproduces the trademarks entirely in connection with the descriptive word “cine” which is the short form for the term cinema making a direct link to the Complainant’s activity. The inclusion of descriptive terms and Top-Level Domain suffixes does not avoid the finding of confusing similarity.

Further, the Complainant submits that the Respondent has no legitimate interests regarding the disputed domain name. The Complainant has not authorized the Respondent to register domain names containing the Complainant’s trademark or otherwise use the Complainant’s trademark. Further, the Complainant holds that there is no indication that the Respondent is commonly known by the disputed domain name and that the Respondent uses or prepares to use the disputed domain name in connection with a *bona fide* offering of goods and services. The Complainant also argues that the Respondent is not making legitimate non-commercial or fair use of the disputed domain name without the intent for commercial gain to misleadingly divert customers or to tarnish the trademark at issue.

The Complainant states that the Respondent registered and is using the disputed domain name in bad faith as the disputed domain name comprises the Complainant’s trademark and is similar to the Complainant’s domain name, leading to confusion for the customers. Further, the Respondent uses the disputed domain name in connection with a website displaying links to services in the field of cinema and movies and the Complainant’s trademark. The links further divert the website’s visitor on the disputed domain name to pages advertising services related to the film industry, including partners of the Complainant’s direct competitor and the Complainant’s theater without authorization. Thereby, the Complainant argues that the

disputed domain name is used to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademark. The Complainant holds that the Respondent must have been aware of the Complainant's earlier trademark registration when registering the disputed domain name, as basic searches in search engines would have revealed the Complainant's website, which references the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

The Complainant has, in accordance with paragraph 4(a) of the Policy, requested that the disputed domain name be transferred to the Complainant.

In accordance with paragraph 4(a) of the Policy, in order to succeed in this proceeding and have the disputed domain name transferred, the Complainant must establish that the three following elements are satisfied for the disputed domain name:

- (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 in bad faith.

Pursuant to paragraph 15 (a) of the Rules, the Panel shall decide the Complaint based on the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Furthermore, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

On the basis of the evidence submitted by the Complainant and, in particular, with regards to the content of the relevant provisions of the Policy (paragraph 4(a), (b), and (c)), the Panel concludes as follows:

A. Identical or Confusingly Similar

Under the first element of paragraph 4 (a) of the Policy, the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant holds several trademark registrations of PATHE. The disputed domain name comprises the Complainant's trademark entirely, including the letters "cine" which is the abbreviation of the word "cinema". The gTLD ".com" is not considered when assessing the similarity between a disputed domain name and a complainant's trademark.

The addition of the letters "cine" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademarks. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Given the considerations mentioned above, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and that the requirements under paragraph 4(a)(i) of the Policy have been satisfied.

B. Rights or Legitimate Interests

For the Complainant to succeed under paragraph 4(a)(ii) of the Policy, the Complainant must establish a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. If the Complainant establishes a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the evidentiary burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

In the Panel's view, the presented evidence referred to by the Complainant is sufficient to establish a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel has not been presented with, or discovered, any evidence that i) the Respondent has received a license or other permission to use the Complainant's trademark or any domain name incorporating this mark; (ii) the Respondent is commonly known by the disputed domain name; (iii) the Respondent has acquired trademark rights to use the disputed domain name; or (iv) the Respondent is making legitimate noncommercial or fair use of the disputed domain name.

The Panel observes that the disputed domain name diverts to a parking website containing PPC links related to cinema and movies, similar to the services and products the Complainant offers.

Based on the above, the Panel concludes that the conditions in paragraph 4(a)(ii) of the Policy have been met.

C. Registered and Used in Bad Faith

For the Complainant to prevail under the third element of paragraph 4(a) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Given that the Complainant's trademark registration predates the registration of the disputed domain name and that the disputed domain name incorporates the complete PATHE trademark, the Panel finds it unlikely that the Respondent was unaware of the Complainant's trademark registrations.

The Panel finds that the website at the disputed domain name attracts Internet users for commercial gain, as the website advertises similar products to those of the Complainant, while also incorporating the Complainant's trademark. Further, the website at the disputed domain name links to services related to partners of the Complainant's direct competitors and the Complainant's theaters. Further, the Respondent has not responded in these proceedings.

Based on the above, the Panel concludes that the Complainant has effectively demonstrated that the Respondent both registered and uses the disputed domain name in bad faith. The Panel, therefore, concludes that the Complainant has satisfied the requirements of paragraph 4(b)(iv) 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, <cinemathe.com>, be transferred to the Complainant.

/Halvor Manshaus/

Halvor Manshaus

Sole Panelist

Date: September 19, 2023