

ADMINISTRATIVE PANEL DECISION

TV5 MONDE v. Hemant Kaushik, USA TV NEWS CORP

Case No. D2024-3949

1. The Parties

The Complainant is TV5 MONDE, France, represented internally.

The Respondent is Hemant Kaushik, USA TV NEWS CORP, United States of America.

2. The Domain Name and Registrar

The disputed domain name <tv5mondenews.com> (the “Disputed Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2024. On September 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 26, 2024, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 30, 2024, 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 October 2, 2024.

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 October 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 24, 2024.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on October 28, 2024. 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, TV5 MONDE, is a French language TV network. The Complainant offers various French-language tv programs subtitled in 12 languages and has been available in the U.S. market since 1998.

The Complainant is the owner of several trademarks including the following:

- TV5 MONDE, French trademark number 3090507, registered on August 24, 2001, in classes 16, 28, 38 and 41;
- TV5 MONDE, international trademark, number 766488, registered on July 30, 2001, in classes 16, 38 and 41.

The Complainant is the owner of several domain names including <tv5monde.com>.

The Disputed Domain Name was registered on July 17, 2024. The Disputed Domain Name resolves to a blank web page except for the following message: “webserver is functioning normally”.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, the Complainant contends that the Disputed Domain Name is confusingly similar to a trademark in which it claims to have rights.

The Complainant further claims that the Respondent has no legitimate interests in respect of the Disputed Domain Name as:

- the Complainant has never granted to the Respondent a license, permission or authorization to use its trademarks or register a domain name comprising these trademarks;
- the Complainant has continuously used for numerous years the sign “TV5MONDE”. It is therefore doubtful that, when the Disputed Domain Name was registered, the Respondent was not aware of the existence of the Complainant prior rights on the trademarks TV5MONDE;
- the Disputed Domain Name leads to an empty website. Such conduct does not amount to the use of the Disputed Domain Name for a bona fide interest;
- details of the ownership of the Disputed Domain Name registration are kept private, which indicates lack of rights and interests in the Disputed Domain Name.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant:

- it is inconceivable that the Respondent coincidentally registered the Disputed Domain Name without any knowledge of the Complainant and its rights;
- prior UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith;

- the Disputed Domain Name consists of an addition of TV5MONDE trademarks and the word “news”, which is a service identical to those offered by the Complainant;
- the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website;
- when a respondent employs a privacy or proxy service to avoid being notified of a UDRP proceeding filed against it, panels tend to find that this supports an inference of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the Disputed Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel observes that the entirety of the TV5 MONDE mark is reproduced within the Disputed Domain Name. In such cases, the domain name will normally be considered confusingly similar to the incorporated mark for purposes of UDRP standing. [WIPO Overview 3.0](#), section 1.7.

Additionally, the Panel finds that the addition of another term – here, “news” – does not prevent a finding of confusing similarity between the Disputed Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is well established that generic Top-Level-Domains (“gTLDs”), here “.com”, may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

The Panel notes that the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Hemant Kaushik". The Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Even where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name incorporates the Complainant's TV5 MONDE trademark in its entirety and merely adds the descriptive term "news". In the Panel's view, the term can be easily linked to the Complainant's TV network business. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), sections 2.5.2 and 2.5.3.

The Panel observes that the Disputed Domain Name resolves to a blank web page except for the following message: "webserver is functioning normally". In the Panel's view, this does not amount to any legitimate noncommercial or fair use or use in connection with a bona fide offering of goods and services either.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel finds that the following circumstances serve as indication of bad faith registration and use:

- the Disputed Domain Name incorporates the Complainant's distinctive trademark in its entirety, and combines it with a term directly referring to the Complainant's TV network business;
- some of the Complainant's trademarks predate the registration of the Disputed Domain Name by more than 20 years;
- the Respondent did not take part in the administrative proceedings.

It is unclear to the Panel whether the Disputed Domain Name is passively held. In any event, given the totality of the circumstances discussed above, the current state of the Disputed Domain Name resolving to a blank page except for the message "webserver is functioning normally" would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3.

Based on the available record, the Panel finds that the Complainant has established the third element 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 <tv5mondenews.com> be transferred to the Complainant.

/Flip Jan Claude Petillion/

Flip Jan Claude Petillion

Sole Panelist

Date: November 11, 2024