

Panel Decision for dispute CAC-ADREU-008387

Case number **CAC-ADREU-008387**

Time of filing **2022-09-02 09:15:03**

Domain names **pathe.eu**

Case administrator

Organization **Denisa Bilik (CAC) (Case admin)**

Complainant

Organization **Agnès BARSİ (PATHE MARQUES)**

Respondent

Name **Bernadette Zakhm Selim Abou**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is unaware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant PATHE MARQUES belongs to the PATHE GROUP, 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. It is the second oldest operating film company.

The Complainant is the owner of a number of trademarks including the term PATHE, registered in 2010.

The disputed domain name, registered in 2017, resolves to a parked webpage displaying pay-per-click links, including to movies. It also resolves to a website at which it is offered for sale.

A. COMPLAINANT

The Complainant contends that the disputed domain name is identical to its PATHE mark and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered or is being used in bad faith.

As to legitimacy, the Complainant has not granted any authorization to the Respondent to register domain names containing the Complainant's trademarks or otherwise make use of its marks. The Respondent is not commonly known by the disputed domain name. Nor is the Respondent otherwise associated with the disputed domain name or any similar name, whether through a family name, business activity, or other legitimate activity. 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 non-commercial or fair use of the disputed domain name. Instead, the Respondent uses the disputed domain name in connection with a website displaying pay-per-click links to services in the field of cinema and movies.

As to bad faith, the Respondent's website is operated for activities similar and complementary to those of the Complainant, which leads to a real risk of confusion. The Respondent's use of the disputed domain name in connection with a parking page with sponsored links relating to the Complainant's industry, is intended to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademark and thus indicates bad faith (see TARKETT SAS v. REZEPT LTD., CAC 4052, <tarkett-commercial.eu>).

B. RESPONDENT

The Respondent did not respond to the Complaint.

DISCUSSION AND FINDINGS

This Complaint was filed before the revocation by Reg. (EU) 2019/517 of Regulation (EC) No. 874/2004, Article 22 of which provides that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21, which provides that a registered domain name shall be subject to revocation where the name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or EU law and where:

- (a) it has been registered by its holder without rights or legitimate interest in the name; or
- (b) it has been registered or used in bad faith.

The Complainant has shown that it has rights in European Union Trademark Registration PATHE, Reg. No. 008463391, registered on June 28, 2010. The Panel finds the Respondent's domain name <pathe.eu> to be identical to the Complainant's mark, since the inconsequential ccTLD ".eu" may be ignored.

As to whether the Respondent has rights or legitimate interests in the disputed domain name, the Panel notes that the disputed domain name was registered several years after the Complainant registered its distinctive PATHE trademark, which by then had become widely known. These circumstances, coupled with the Complainant's assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that she does have rights or legitimate interests in the disputed domain name. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is unnecessary to consider the question of bad faith registration or use.

Since the Complainant has a registered office in France, the Complainant is eligible to register the domain name under the registration provisions of Article 20 of Regulation (EU) 2019/517.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name PATHE.EU be transferred to the Complainant

PANELISTS

Name **Mr Alan Lawrence Limbury**

DATE OF PANEL DECISION 2022-11-25

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <pathe.eu>.

II. Country of the Complainant: France, country of the Respondent: Canada.

III. Date of registration of the domain name: December 8, 2017.

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: EUTM word trademark Reg. No. 008463391, registered for the term of 10 years, filed on 12 October 2009, registered on June 28, 2010 and renewed on September 19, 2019 in respect of goods and services in classes 9, 16, 25, 28, 35, 38, 41, 42 and 43 (Nice Classification).

V. Response submitted: No.

VI. Domain name is identical to the protected right of the Complainant.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):

1. No
2. Why: the Respondent does not contest the Complainant's assertions that Complainant has not granted any authorization to the Respondent to register domain names containing the Complainant's trademarks or otherwise make use of its marks; 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 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 non-commercial or fair use of the disputed domain name; instead, the Respondent uses the disputed domain name in connection with a website displaying pay-per-click links to services in the field of cinema and movies.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):

1. Unnecessary to consider.
2. Why: The finding regarding legitimacy is sufficient to dispose of this proceeding.

IX. Other substantial facts the Panel considers relevant: None.

X. Dispute Result: Transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant: None.

XII. Is Complainant eligible? Yes.
