

ADMINISTRATIVE PANEL DECISION

Pink TV v. Privacy service provided by Withheld for Privacy ehf / Konstantin Rublev

Case No. D2022-0708

1. The Parties

The Complainant is Pink TV, France, represented by PROMARK, France.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Konstantin Rublev, Netherlands.

2. The Domain Name and Registrar

The disputed domain name <pinkx.gay> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 1, 2022. On March 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 2, 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 March 3, 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 March 7, 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 March 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 30, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on April 1, 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 French company offering adult content under the trademark PINKX on a TV channel and through VOD services and online forums.

The Complainant is the owner of the following trademark registrations for the sign PINKX (the “PINKX trademark”):

- the French trademark PINKX with registration No. 3183931, registered on September 12, 2002 for services in International Class 41;
- the French trademark PINKX with registration No. 3526838, registered on September 24, 2007 for goods and services in International Classes 9, 10, 35, 38, 41, 42, and 45; and
- the Benelux trademark PINKX with registration No. 831381, registered on January 7, 2008 for services in International Classes 35, 38, 41, and 42.

The Complainant is also the owner of the domain names <pinkx.fr> registered on October 26, 2003 and <pinkx.eu> registered on August 24, 2007, both of which resolve to the Complainant’s official website.

The disputed domain name was registered on January 15, 2022. It redirects to a third-party website with pornographic and explicit content.

5. Parties’ Contentions

A. Complainant

The Complainant states that it has used the PINKX trademark since 2007 in respect of its gay TV channel in France and Europe, and that this trademark is known to English-speaking Internet users.

The Complainant submits that the disputed domain name is confusingly similar to its PINKX trademark, because it entirely integrates the trademark, and the “.gay” generic Top-Level Domain (“gTLD”) is a reference to the audience of the Complainant, which reinforces the likelihood of confusion between the disputed domain name and the Complainant’s trademark. The Complainant notes that the disputed domain name is used for a website offering the same type of services as those offered by the Complainant.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by it, has no connection with the Complainant, and has not been authorized by the Complainant to use the PINKX trademark. The Complainant maintains that the Respondent did not register the disputed domain name with a *bona fide* intent and is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the PINKX trademark. Rather, the Respondent reproduces the Complainant’s PINKX trademark in the disputed domain name in order to benefit from the Complainant’s investments and reputation, and to attract users to its own website.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent attempts to attract Internet users by confusing them as to the affiliation of its website, which offers services that are highly similar to the ones offered by the Complainant, so Internet users will believe that its website is linked to the Complainant. The Complainant adds that the “.gay” gTLD

indicates that the content of the website hosted at the disputed domain name is aimed at the homosexual public.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements, which have to be met by the Complainant to obtain the transfer of 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.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”

The Respondent has however submitted no Response and has not disputed the Complainant's contentions and evidence in this proceeding.

A. Identical or Confusingly Similar

The Complainant has submitted evidence that demonstrates its rights in the PINKX trademark. The Panel is therefore satisfied that the Complainant has established its standing to file the Complaint.

The disputed domain name includes the elements “pinkx” and the “.gay” gTLD. The “pinkx” element is identical to the PINKX trademark. As to the “.gay” gTLD, the Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the gTLD section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The meaning of such gTLD may however be relevant to a panel's assessment of the second and third elements. See section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

On this basis, the Panel finds that the disputed domain name is identical to the Complainant's PINKX trademark.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, stating that the Respondent is not commonly known under it and is not related to the Complainant or authorized by it to use the PINKX trademark. According to the Complainant, the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services, as it resolves to an adult website that offers services highly similar to those offered by the Complainant.

The Respondent has not disputed the Complainant's statements and the evidence submitted by it. It has not alleged having rights or legitimate interests in the disputed domain name.

The evidence submitted by the Complainant shows that the disputed domain name, which is identical to the Complainant's PINKX trademark, indeed redirects to a website with adult content, which is similar to the content offered by the Complainant. There is no disclaimer for the lack of relationship between the Parties.

It therefore appears from the evidence as more likely than not that the Respondent has registered and used the disputed domain name to create an impression in Internet users that the website at the disputed domain name is related to the Complainant and offers the same content, without making them aware of the lack of relationship between the Parties. Such conduct does not appear as legitimate and does not support a finding that the Respondent has rights or legitimate interests in the disputed domain name.

On the basis of the above, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

In the present case, the disputed domain name is identical to the Complainant's PINKX trademark, which was registered many years earlier, and is being used for a website that offers the same type of content as the type offered by the Complainant. It does not contain a disclaimer of the lack of relationship between the Parties or the lack of endorsement of the website by the Complainant.

Moreover, the Panel finds that the gTLD section of the disputed domain name is relevant for this case under the third element, as it is descriptive of the services offered by the Complainant under its PINKX trademark and tends to suggest the Respondent knew, or should have known, of the Complainant's PINKX trademark. Therefore, the Panel takes into account the gTLD section of the disputed domain name and concludes that this element of the disputed domain name further increases the likelihood of confusion with the PINKX trademark of the Complainant and supports the finding of bad faith registration.

In view of the above, the Panel finds as more likely than not that the Respondent was aware of the Complainant and of its PINKX trademark when registering the disputed domain name, and that by registering and using it, the Respondent has intentionally attempted to attract Internet users to its website by creating a likelihood of confusion with the Complainant's PINKX trademark as to the affiliation or endorsement of the Respondent's website and of the content offered on this website. Moreover, the Respondent has not come forward with any claims or evidence of good faith use of the disputed domain name, explained its choice of the disputed domain name being identical to the PINKX trademark, or otherwise disputed the contentions in the Complaint.

Therefore, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith.

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 <pinkx.gay> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: April 13, 2022