

## **ADMINISTRATIVE PANEL DECISION**

Audiolib v. Jane Dew  
Case No. D2022-1416

### **1. The Parties**

The Complainant is Audiolib, France, represented by GPI Marques, France.

The Respondent is Jane Dew, Cayman Islands, United Kingdom.

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

The disputed domain name <audiolib.org> is registered with DropCatch.com LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 20, 2022. On April 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 11, 2022.

The Center appointed Zoltán Takács as the sole panelist in this matter on June 24, 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**

Created in 2007, the Complainant is the leader in the French audio book market. It is a part of Hachette Group, being a subsidiary of the French companies Hachette Livre (the third largest trade and educational book publisher in the world) and Albin Michel.

The Complainant is the owner of the French trademark registration No. 073518550 for the word mark AUDIOLIB with the filing date of August 6, 2007.

The Complainant has online presence at “www.audiolib.fr” and the corresponding domain name was registered on June 8, 2007.

The disputed domain name was registered on September 13, 2021, and used in relation to a website displaying links to third parties’ websites, some of which offering audio books, products in direct competition with those of the Complainant. The Complainant also produced evidence showing that the disputed domain name was offered for sale on <sedo.com>, with the minimum offer starting at USD 500.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name, which fully incorporates its AUDIOLIB trademark is confusingly similar to it.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii) or (iii) of the Policy.

The Complainant submits that the Respondent’s registration and use of the disputed domain name amounts to taking unfair advantage of the recognition associated with its trademark, diverting Internet users from the Complainant’s official website to the Respondent’s own website for commercial benefit.

The Complainant also states that the Respondent has registered many domain names infringing other known trademarks, which is further evidence of the Respondent’s bad faith conduct.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Paragraph 15(a) of the Rules requires that the Panel’s decision be made “on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

It has been a consensus view in UDRP decisions that a respondent’s default (*i.e.*, failure to submit a response) would not by itself mean that the complainant is deemed to have prevailed; a respondent’s default is not necessarily an admission that the complainant’s claims are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (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.

#### **A. Identical or Confusingly Similar**

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among UDRP panels that if the complainant owns a registered trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced proper evidence of having registered rights in the AUDIOLIB trademark and for the purpose of this proceeding the Panel establishes that the French trademark registration No. 073518550 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assessed whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the [WIPO Overview 3.0](#), 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. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The disputed domain name comprises the entirety of the Complainant's AUDIOLIB trademark.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc", or, as in this case, ".org") is viewed as a standard registration requirement and as such is generally disregarded under the first element confusing similarity test.

The Panel finds that the disputed domain name is identical to the Complainant's trademark and that requirement of paragraph 4(a)(i) of the Policy is satisfied.

#### **B. Rights or Legitimate Interests**

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted sufficient and uncontested evidence that it holds

well-established rights in the AUDIOLIB trademark.

The Complainant has never authorized the Respondent to use its trademark in any way, and its prior rights in the trademark precede the date of registration of the disputed domain name.

According to section 2.1 of the [WIPO Overview 3.0](#), 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 the 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.

The Respondent defaulted and failed to respond and, by doing so, failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant's *prima facie* case.

The website at the disputed domain name displays pay-per-click (“PPC”) advertising links that redirect Internet users to third parties’ websites, some of which offer competing goods with those of the Complainant.

According to section 2.9 of the [WIPO Overview 3.0](#), “use of a domain name to host parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users”.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (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.

The AUDIOLIB trademark is distinctive and unique to the Complainant. A basic Internet search with regard to the disputed domain name returns solely the Complainant and its businesses.

These facts in view of the Panel show that the Respondent knew of the Complainant’s AUDIOLIB trademark when registering the disputed domain name, specifically targeting the Complainant in an attempt to deceive

Internet users.

Paragraph 4.(b)(ii) of the Policy expressly forbids a pattern of registrations of trademark-abusive domain names corresponding to the distinct marks of individual brand owners.

Section 3.1.2 of the [WIPO Overview 3.0](#) defines as a pattern, *inter alia*, bad faith conduct where the respondent registers, simultaneously or otherwise, multiple trademark-abusive domain names corresponding to the distinct marks of individual brand owners.

The Complainant provided extensive evidence that the Respondent has engaged in a pattern of registering domain names corresponding to third parties trademarks (e.g. *Instagram, LLC v. Jane Dew*, WIPO Case No. [D2019-0708](#) (instagrambegenihilesi.org); *Car&Boat Media v. Jane Dew*, WIPO Case No. [D2020-0690](#) (caradisiac-publicite.com); *Volkswagen AG v. Jane Dew*, WIPO Case No. [D2020-0483](#) (docteur-dsg.com)).

Furthermore, the use of the disputed domain name, which is identical to the Complainant's distinctive trademark, to host PPC links reflects the Respondent's intent to attempt to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant's AUDIOLIB trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site. Similarly, given the reputation of the Complainant's trademark and the Respondent's pattern of cybersquatting, the for sale nature of the disputed domain name reinforces the Panel's bad faith finding. Section 3.1.1 of the [WIPO Overview 3.0](#).

For the reasons set out above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith and that paragraph 4(a)(iii) of the Policy is 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 <audiolib.org> be transferred to the Complainant.

/Zoltán Takács/

**Zoltán Takács**

Sole Panelist

Date: July 8, 2022