

## **ADMINISTRATIVE PANEL DECISION**

Pathe Marques v. BMCA / Privacy service provided by Withheld for Privacy ehf / Gamv Warler  
Case No. D2022-1430

### **1. The Parties**

The Complainant is Pathe Marques, France, represented by Cabinet Delucenay & Staeffen, France.

The Respondent is BMCA, Netherlands / Privacy service provided by Withheld for Privacy ehf, Iceland / Gamv Warler, Netherlands.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 21, 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 April 21, 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 April 22, 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 April 26, 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 May 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 31, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on June 27, 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.

On June 27, 2022, the Center received an email communication from an entity seemingly associated with the Respondent stating: “Originally I thought this was some sort of spam, my apologies. Can you let me know why this is emailed to us? The domain is not ours for a while now”.

#### **4. Factual Background**

The Complainant is a company incorporated in France in 1999. It is part of the Pathe Group of companies, which produces and distributes films. As at 2019, the Pathe Group operated 133 cinemas and 1339 screens in locations across continental Europe and had a revenue of EUR 946 million and 4896 employees.<sup>1</sup>

The Complainant is the owner of a number of trade marks for PATHE, including European Union Trade Mark, registration number 008463391, in classes 9, 16, 25, 28, 35, 38, 41, 42, and 43, registered on June 28, 2010.

The disputed domain name was registered on December 31, 2017, and following registration, it redirected to the Complainant’s website in the Netherlands at “www.pathe.nl”. The Complainant’s advisors sent a claim letter to the then registrant, BMCA, on September 6, 2021, which resulted in negotiations whereby the registrant agreed to sell the disputed domain name to the Complainant for USD 2,500. However, the transaction did not take place and the registrant stopped replying to communications sent on behalf of the Complainant.

On April 21, 2022, (being the date of the filing of the Complaint), the Whois record was changed in order to show Gamv Warler as the underlying registrant, although its details were not immediately evident due to its use of a privacy service. The disputed domain name has continued to resolve to the Complainant’s website in the Netherlands.

#### **5. Parties’ Contentions**

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

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. The disputed domain name is identical to the Complainant’s PATHE mark and the use of the generic Top Level Domain (“gTLD”) “.tickets” underlines the likelihood of confusion between the disputed domain name and the Complainant’s mark.

The Complainant says also that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Complainant has not given permission to any party to register the disputed domain name, nor is the Respondent commonly known by the disputed domain name. Moreover, the use of the disputed domain name to redirect to the Complainant’s website does not comprise a *bona fide* offering of goods and services, nor a legitimate noncommercial or fair use of it.

The Complainant says that the disputed domain name was registered and is being used in bad faith. There is no evidence that the Respondent is a real person, in that the Complainant’s searches do not reveal anyone in the Netherlands with such a name. Furthermore, the fact that the registrant details were changed on the date the Complaint was filed, coupled with the use by the Respondent of a privacy service, suggests that it is seeking to disguise its true identity which, in these circumstances is indicative of bad faith.

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For the purpose of this decision, it is not necessary to distinguish between entities within the Pathe Group and references below to “the Complainant” include, where the context so requires, references to the Pathe Group or other companies within it.

Moreover, as the disputed domain name redirects to the Complainant's official Dutch website, there is a significant risk that Internet users will think that it has been registered by the Complainant.

As at the date of registration of the disputed domain name, the Complainant's PATHE trade mark was well-known and the redirection to the Complainant's website in the Netherlands establishes that the Respondent was aware of the Complainant's business and PATHE trade mark as at the date of registration. The use of the gTLD ".tickets" increases the likelihood that Internet users will associate the disputed domain name with the Complainant and provides further evidence of the Respondent's registration and use of the disputed domain name in bad faith in order to create confusion with the Complainant's trade marks and to seek to attract, for commercial gain, Internet users to its website in accordance with the circumstance of bad faith set out at paragraph 4(b)(iv) of the Policy.

## **B. Respondent**

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

## **6. Discussion and Findings**

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant prove each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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. Cyberflight**

Having regard to the circumstances in which the registrant details were changed following filing of the Complaint and the fact that the use of the disputed domain name has remained unchanged, the circumstances suggest that the registrant has engaged in cyberflight. Accordingly, notwithstanding that an entity associated with BMCA sent an email to the Center on June 27, 2022, asserting that "The domain is not ours for a while now", the former and current registrants of the disputed domain name (especially without any explanation as to their identity/identities), together with the privacy service used by the current registrant, are the proper Respondents to these proceedings; see *Humana Inc. v. CDN Properties Incorporated*, WIPO Case No. [D2008-1688](#).

## **B. Identical or Confusingly Similar**

The Complainant has provided details of its registered trade marks for PATHE which establish its rights in this mark.

As a technical requirement of registration, the gTLD, that is ".tickets" in this case, is typically disregarded for the purposes of considering the first element as it is a technical requirement of registration. The disputed domain name therefore comprises the Complainant's PATHE mark, in full and without alteration and with no additional components. It is accordingly identical to the Complainant's mark.

The Panel therefore finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

### **C. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out circumstances, without limitation, by which a respondent might demonstrate that it has rights or a legitimate interest in a domain name. These are, summarized briefly: if the respondent has been using the domain name in connection with a *bona fide* offering of goods and services, if the respondent has been commonly known by the domain name, or if the respondent has been making a legitimate, noncommercial or fair use of the domain name.

The only known use of the disputed domain name has been to redirect to the Complainant's official website in the Netherlands. Such use does not comprise use in connection with a *bona fide* offering of goods and services and therefore does not serve to confer any rights or legitimate interests on the Respondent; see, for example, *GameStop, Inc. v. Above.com Domain Privacy / Protection Domain*, WIPO Case No. [D2018-1243](#). Moreover, the fact that the disputed domain name incorporates the gTLD ".tickets", a word which is apt to be closely associated by Internet users with the Complainant's cinema business, increases the likelihood of confusion with the Complainant and reinforces the lack of *bona fide* use by the Respondent; see *Hike Private Limited v. Jared Hanstra*, WIPO Case No. [D2018-1588](#).

The second and third circumstances outlined above can be dealt with briefly; there is no evidence that the Respondent has been commonly known by the disputed domain name and the use which has been made of it is commercial in character. Furthermore, having regard to the fact that the disputed domain name is identical to the Complainant's PATHE mark there is a high risk of implied affiliation with the Complainant which prevents its use by the Respondent from being fair; see, for example, *Spotify AB v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Sibelius Toledo*, WIPO Case No. [D2020-2404](#).

Once a complainant has made out a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to show that it does have such rights or legitimate interests. In the absence of any response from the Respondent to the Complaint, it has failed to satisfy this burden.

The Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

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

The Complainant's PATHE trade mark is inherently distinctive and the Complainant has provided evidence of its repute. The fact that the only known use of it by the Respondent has been to redirect to a website of the Complainant establishes both an awareness by the Respondent of the Complainant's rights as at the date of registration of the disputed domain name and an intention on its part to take unfair advantage of them. Moreover, as explained at section 3.1.4 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") "[UDRP panels] have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith".

Use of the disputed domain name simply to resolve to the Complainant's own website in the Netherlands comprises bad faith use as Internet users will be apt to assume that the disputed domain name is owned and/or controlled by the Complainant. See section 3.1.4 of the [WIPO Overview 3.0](#) which explains that, among the factors which have been found by earlier UDRP panels to comprise bad faith use are "redirecting the domain name to the complainant's (or a competitor's) website". See also *GameStop, supra*, and *AdvanSix Resins & Chemicals, LLC v. John Lubega, Plush Electronics*, WIPO Case No. [D2020-0760](#).

The change of registrant details as at the time of the filing of the Complaint amounts to cyberflight which, in these circumstances, is a further indication of bad faith on the part of the Respondent; see *Bayerische Motoren Werke AG v. Diagnostic Software, Global Domain Privacy / Elizabeth Davis, Chen Guo Qiang*, WIPO Case No. [D2020-1110](#) and *Humana Inc. v. CDN Properties Incorporated (supra)*.

The Panel therefore finds that the disputed domain name has been both registered and is being used 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, <pathe.tickets>, be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: July 11, 2022