

ADMINISTRATIVE PANEL DECISION

Audiolib v. Artem Belozarov

Case No. D2024-2077

1. The Parties

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

The Respondent is Artem Belozarov, Russian Federation.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2024. On May 17, 2024, 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, disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 24, 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 May 28, 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”).

The Respondent sent email communications to the Center on May 29 and May 30, 2024. In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2024. On June 21, 2024, the Center informed the Parties that it would proceed to panel appointment. On June 22, 2024, the Respondent sent another email communication to the Center.

The Center appointed Alissia Shchichka as the sole panelist in this matter on July 10, 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, Audiolib, established in 2007, is part of the Hachette Group, a subsidiary of the French companies Hachette Livre, a major global book publisher, and ALBIN MICHEL. Audiolib has been a leading French audiobook publisher for several years.

The Complainant has evidenced to be the registered owner of French Trademark registration n° 3518550, for the word mark AUDIOLIB, registered on August 6, 2007, in classes 9, 16, 235, 38, and 41.

The Complainant also owns numerous domain names that incorporate the term “audiolib,” including the following: <audiolib.fr> registered on August 6, 2007, <audiolib.eu> registered on August 6, 2007, <audiolib.net> registered on August 6, 2007, and <audiolib.org> registered on September 13, 2021. All these domain names redirect to the Complainant’s official website, “www.audiolib.fr”, where the Complainant promotes its services. Additionally, the Complainant holds other inactive domain names such as <audiolib.com> registered on July 18, 2002, and <audiolib.audio> registered on October 9, 2014, among others.

The trademark and domain names were registered before the disputed domain name, which was registered on March 13, 2024. The disputed domain name directed to a website that displayed the Complainant’s trademark and publishes various audiobooks in Russian. At the time of this Decision, the disputed domain name redirects to the website “www.audiomir.xyz” displaying the same content.

The Respondent, according to the disclosed Whois information for the disputed domain name, is apparently located in Russian Federation.

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.

According to the Complainant, the disputed domain name is identical to the Complainant’s trademark AUDIOLIB as it reproduces the trademark. In respect of the generic Top-Level Domain (“gTLD”) “.xyz”, which forms part of the disputed domain name, the Complainant requests that the Panel disregard it under the first element as it is a standard registration requirement.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, as the Complainant has never licensed, contracted, or otherwise permitted the Respondent to apply for or register the disputed domain name. Additionally, the Respondent was not using the disputed domain name in connection with a bona fide offering of goods or services, but rather to offer competing services and intentionally trade on the Complainant’s AUDIOLIB trademark.

The Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name since (1) the Complainant is not affiliated with the Respondent; (2) the Respondent is not commonly known by the disputed domain name; (3) does not make a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain nor misleadingly diverting consumers, but rather with the purpose of misleadingly diverting consumers for commercial gain. This is confirmed by the ads appearing on the Respondent’s website when one clicks on the books offered.

Finally, the Complainant asserts that the Respondent was aware of and deliberately targeted the Complainant's previously registered trademark to take unfair advantage of the recognition associated with it by diverting Internet users from the Complainant's official website to the Respondent's own website. Therefore, the Complainant alleges that the registration and use of the disputed domain name was, and currently is, in bad faith.

B. Respondent

The Respondent did not file any substantial response to the Complainant's contentions. However, after receiving the notification from the Center regarding the commencement of the UDRP proceeding, the Center received two emails as follows:

"Hello! I didn't file any complaint. What are you talking about?"

"I don't understand what the point of the complaint is? Can I see the text of the complaint?"

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

The Respondent's failure to submit a substantive response in the case at hand does not automatically result in a decision in favor of the Complainant, however, paragraph 5(f) of the Rules provides that if the Respondent does not submit a substantive response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the Complaint.

Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from the Respondent's failure to submit a substantive response as it considers appropriate.

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.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

The Respondent is using the disputed domain name to offer services identical to those provided by the Complainant.

The Complainant has confirmed that the Respondent is not affiliated with the Complainant, or otherwise authorized or licensed to use the AUDIOLIB trademark or to seek registration of any domain name incorporating the trademark. The Respondent is also not known to be associated with the AUDIOLIB trademark, and there is no evidence showing that the Respondent has been commonly known by the disputed domain name. [WIPO Overview 3.0](#), section 2.3.

The Respondent is not, as explained below, making a legitimate noncommercial use of the disputed domain name.

The Panel observes that the disputed domain name may be considered descriptive, as it comprises the dictionary terms “audio” and the abbreviation “lib” for “library.” While the mere use of dictionary terms in a domain name does not automatically confer rights or legitimate interests under the second element of the UDRP, the Panel acknowledges that a domain name consisting of dictionary terms could, in principle, represent a legitimate interest if e.g., used in connection with the meaning of those terms. However, these principles do not apply if it is demonstrated that the Respondent registered the disputed domain name primarily to target a third party’s trademark rights; see e.g., [WIPO Overview 3.0](#), section 2.10

Additionally, the Panel finds that although “audiolib” might be interpreted as a term composed of “audio” and an abbreviation of “library,” as combined, it is a trademark, and enjoys long-standing prior use by the Complainant who also holds a number of corresponding domain names. Additionally, the Panel notes that all content on the Respondent’s website is in Russian, and the Respondent has not provided any explanation for selecting a Latin-derived term that fully coincides with the Complainant’s trademark for the disputed domain name.

Furthermore, the Panel finds it highly probable that the Respondent intended to trade off the Complainant’s rights. It should be noted that the Complainant’s name appears in the top results on a Google search for the term “audiolib,” whether written in English or Russian. Consequently, the Respondent would have, and should have, become aware of the Complainant’s rights had they performed a basic Google search.

In these circumstances, and in particular noting the redirection to a competing website (where the Complainant’s mark has nevertheless been displayed) the value of the term “audiolib” in the disputed domain name appears to the Panel to derive primarily from the Complainant’s trademark and not from any dictionary meaning.

Therefore, the Panel concludes that the Respondent does not have any rights or legitimate interests in the disputed domain name and the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The third element of paragraph 4(a) of the Policy requires that the Complainant demonstrate that the Respondent registered and is using the disputed domain name in bad faith.

The Panel's analysis of the question of registration and use in bad faith in this case mirrors its analysis of rights and legitimate interests as noted above. In short, for the reasons outlined above, the Panel considers that the Respondent knew or should have known the Complainant's trademark at the time of registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Furthermore, the Panel notes that the Respondent uses the disputed domain name to resolve to a website offering audiobooks, and the Complainant has submitted evidence showing that the website featured ads bearing no relation to any non-trademark meaning (if there is one) of the term "audiolib." In the Panel's view, this plus the redirection to a competing site (bearing the Complainant's mark no less) indicates that the Respondent has intentionally sought to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of its website or of the services on its website.

In the absence of any evidence to contend against the Complainant's evidence and claims, this Panel accepts the Complainant's evidence and finds that the Respondent has registered and used the disputed domain name, without the Complainant's consent or authorization, for the purpose of capitalizing on the reputation of the Complainant's trademark to target the Complainant's rights. [WIPO Overview 3.0](#), section, 3.5.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 <audiolib.xyz> be transferred to the Complainant.

/Alissia Shchichka/

Alissia Shchichka

Sole Panelist

Date: July 24, 2024