



NATIONAL ARBITRATION FORUM

DECISION

Pirelli & C. S.p.A. v. Parisa Tabriz
Claim Number: FA0702000921798

PARTIES

Complainant is **Pirelli & C. S.p.A.** (“Complainant”), represented by **Cristina Cazzetta**, of **Porta, Checcacci & Associati S.p.A.**, Via Trebbia 20, Milano 20135, Italy.
Respondent is **Parisa Tabriz** (“Respondent”), 111 N. Rengstorff Ave. #139, Mountain View, CA 94043.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<p-zero.org>**, registered with **Go Daddy Software, Inc.**

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

Timothy D. O’Leary as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on February 22, 2007; the National Arbitration Forum received a hard copy of the Complaint on February 26, 2007.

On February 22, 2007, Go Daddy Software, Inc. confirmed by e-mail to the National Arbitration Forum that the **<p-zero.org>** domain name is registered with Go Daddy Software, Inc. and that Respondent is the current registrant of the name. Go Daddy Software, Inc. has verified that Respondent is bound by the Go Daddy Software, Inc. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy”).

On March 5, 2007, a Notification of Complaint and Commencement of Administrative Proceeding (the “Commencement Notification”), setting a deadline of March 26, 2007 by which Respondent could file a Response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent’s registration as technical, administrative and billing contacts, and to postmaster@p-zero.org by e-mail.

A timely Response was received and determined to be complete on March 22, 2007.

On March 30, 2007, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed Timothy D. O'Leary as Panelist.

RELIEF SOUGHT

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

PARTIES' CONTENTIONS

A. COMPLAINANT

CONTENTION NO. 1: ON THE ISSUE OF THE DOMAIN NAME <P-ZERO.ORG> BEING IDENTICAL AND CONFUSINGLY SIMILAR TO COMPLAINANT'S DOMAIN NAME, COMPLAINANT STATES:

The disputed domain constitutes usurpation and violation of the rights of the Complainant PIRELLI & C. S.p.A. with regard to its trademarks registered in Italy and in the world. PIRELLI & C. S.p.A. has been in business over 130 years.

P Zero was born as an innovative tire suitable for road traffic but with all the typical characteristics of racing tires. With the birth of Ferrari F40 in 1987, PZero took the decisive step, which from a 'semi-rally position' placed it at the top of tires for a real traffic use directly. As of 1995, the monogram PZero also characterizes the series of tires available for the Ferrari 333SPs competing on the American circuits of IMSA Championship. In 2000 Pirelli launched the new PZero Rosso (red) on worldwide markets. The name PZero has been chosen once again, because PZero represents the turning point in the UHP tires technology.

Zero stands for "zero limiti" (no limits) and Rosso stands for the red color which symbolizes the passion for driving. This is the same feeling that accompanied PZero's birth and keeps on animating the new generation of ultra-low profile high performance tires.

Three years ago, the PZero brand launched Pirelli as their industrial design project for clothing, encompassing a line of apparel, shoes, watches and accessories, and is known for applying high technology to a fashion product.

The PIRELLI Group is present with its own industrial activities across 25 countries with 80 sites and approximately 36,300 employees. From a geographical point of view, revenues from sales of goods and services are distributed over: 65% in Europe (of which 22% in Italy); approximately 9% in North America; approximately 12% in Central and South America and the remaining 14% in Australia, Africa and Asia.

PIRELLI is one of the world's best-known Italian brand names, thanks above all to the widespread distribution of the tires produced in 22 factories located in 10 different countries.

The PIRELLI range comprises tires for cars, motorcycles and commercial vehicles.

The domain name **<p-zero.org>** is identical or confusingly similar to the trademarks or service marks in which the PIRELLI & C. S.p.A. has rights, for the following reasons:

PIRELLI & C. S.p.A. has used the PZERO marks for many, many years in connection with tire sector and in clothing design.

In addition, PIRELLI & C. S.p.A. owns and actively uses the domain name PZERO as its domain name, namely <pzerocollection.com>, <pirellipzero.com>, <pirellipzero.it>, <pzeroweb.eu>, <p-zeroweb.edu>, <pzeroclub.com>, <p-zero.it>, <pzeroweb.it>, <pzero.eu>, <p-zero.eu>, <pzeronero.com>, <pzerorosso.com>, <pzerogiallo.com>, <scorpionzero.com>, <soprazero.eu>, <pzeroassoluto.com>, <pzeroassoluto.net>, <pzeroassoluto.org>, <pzero-assoluto.com>, <pzero-assoluto.net>, <pzero-assoluto.org>, <pzeroassoluto.it>, and <pzero-assoluto.it>.

Parisa Tabriz's **<p-zero.org>** domain name is confusingly similar to PIRELLI & C. S.p.A.'s PZERO marks because the slight differences (the addition of the symbol "-", and the addition of a generic top-level domain ("gTLD")) are insufficient to distinguish Parisa Tabriz's domain name from PIRELLI & C. S.p.A.'s mark.

Moreover, Parisa Tabriz's **<p-zero.org>** domain name is confusingly similar PIRELLI & C. S.p.A.'s PZERO marks pursuant to Policy ¶4(a)(i) because they misspell the mark.

It is well settled that the mere misspelling of a mark or the addition of a generic word do not distinguish a domain name from a mark.

RESPONSE OF RESPONDENT TO CONTENTION NO. 1.

In response to ICANN Policy 4(a)(i), Parisa Tabriz (“Respondent”) disagrees that **<p-zero.org>** (the “domain”) is identical to P ZERO, PZERO, or ZERO (the “trademarks”) that Pirelli & C.S.p.A. (“Complainant”) have rights to. A domain name combination must include a generic top-level domain (gTLD), such as .com, .net, .org, and .gov (among others) and a second-level domain, which can be any word not already reserved in combination with the top-level domain. The top-level domain .org customarily has been used for non-profit or “miscellaneous” entities and organizations. Respondent claims that she has noncommercial intent to host a personal webpage at the domain,

which is appropriate for a .org gTLD. A domain with the same second-level domain but different gTLD is not necessarily considered identical.

CONTENTION NO. 2. ON THE ISSUE OF RESPONDENT HAVING NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME, COMPLAINANT STATES:

Parisa Tabriz (domain-name holder) has no rights or legitimate interests in respect of the domain name that is the subject of the Complaint, for the following reasons: Parisa Tabriz neither uses, nor to PIRELLI & C. S.p.A.'s knowledge has made demonstrable preparations to use, the <p-zero.org> domain name in connection with a *bona fide* offering of goods or services. As demonstrated by the home page of the <p-zero.org> website, the site contains no content or information relative to Parisa Tabriz as manufacturer. Rather, Parisa Tabriz's site merely contains links to various third-party sites and links such as <alfaromeo.it> and <motorcyclestire.info>. Such use of the domain name does not constitute a *bona fide* offering of goods or services.

RESPONSE OF RESPONDENT TO CONTENTION NO. 2.

Complainant asserts that Respondent has no legitimate claim to the domain because there is no established connection between the domain and Respondent, citing both *Broadcom Corp. v. Intellifone Corp.*, FA 96356 (Nat. Arb. Forum Feb. 5, 2001) and *Gallup, Inc v. Amish Country Store*, FA 96209 (Nat. Arb. Forum Jan. 23, 2001). In both of these cases, the respondent had a commercial interest in using the domain, however, because Parisa Tabriz has only noncommercial intent to use <p-zero.org>, an established connection between the respondent and domain should not be required. With the growing popularity of personal webpages, blogs, and in general, publishing personal content on the Internet, individuals with a noncommercial interest in a domain should not be expected to have strong evidence correlating their own identity with a particular domain name.

CONTENTION NO. 3. ON THE ISSUE OF THE DOMAIN NAME BEING REGISTERED AND USED IN BAD FAITH, COMPLAINANT STATES:

Obviously, the opponent is using the reputation and fame of Complainant in bad faith for this website of dubious qualities.

There is no evidence that a website or other on-line presence is in the process of being established which will use this domain name. There is no evidence of advertising, promotion or display to the public of the domain name. There is no evidence of advertising, promotion or display to the public of the domain name. Finally, there is no evidence that Respondent has offered to sell, rent or otherwise transfer the domain name to the Complainant or any other person. As the WIPO Administrative Panel correctly stated in *Telstra Corporation Limited v. Nuclear Marshmallows*, D2000-0003 (WIPO Feb. 18, 2000) and *Red Bull GmH v. Manuel Sousa*, D2001-0584 (WIPO Sept. 21, 2000):

[T]he relevant issue is not whether the Respondent is undertaking a positive action in bad faith in relation to the domain name, but instead whether, in all circumstances of the case, it can be said that the Respondent is acting in bad faith: “. . . the concept of a domain name ‘being used in bad faith’ is not limited to positive action; inaction is within the concept. . . . it is possible . . . for inactivity by the Respondent to amount to the domain name being used in bad faith.”

RESPONSE OF RESPONDENT TO CONTENTION NO. 3.

Respondent neither registered nor is using the domain in bad faith based on a history of passive holding or accusation of cybersquatting, no prior attempt to contact Complainant (to sell the domain or otherwise), and no financial or personal incentive to act in bad faith towards complainant [Rule 4(a)(iii)].

Respondent has made every effort to demonstrate legitimate noncommercial use in this response, per ICANN Rule 4(c)(iii), and asks that the domain <p-zero.org> remain in her possession.

FINDINGS

IDENTICAL OR CONFUSINGLY SIMILAR: *Policy ¶ 4(a)(i).*

I FIND THE ISSUE ON THIS ELEMENT IN FAVOR OF COMPLAINANT.

Complainant provides as evidence a list of all of its trademark registrations containing the P ZERO mark, including in Italy (Reg. No. 873,743 issued September 4, 2002; Reg. No. 926,876 issued April 5, 2004) and Andorra (Reg. No. 21,524 issued March 10, 2005; Reg. No. 23,155 issued July 6, 2006). I find that these trademark registrations adequately demonstrate Complainant’s rights in the P ZERO mark pursuant to Policy ¶ 4(a)(i). *See Metro. Life Ins. Co. v. Bonds*, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) (finding that a trademark registration adequately demonstrates a complainant’s rights in a mark under Policy ¶ 4(a)(i)); *see also Thermo Electron Corp. v. Xu*, FA 713851 (Nat. Arb. Forum July 12, 2006) (holding that the complainants established rights in marks because the marks were registered with a trademark authority); *see also Koninklijke KPN N.V. v. Telepathy Inc.*, D2001-0217 (WIPO May 7, 2001) (finding that the Policy does not require that the mark be registered in the country in which the respondent operates; therefore it is sufficient that the complainant can demonstrate a mark in some jurisdiction).

I find that the <p-zero.org> domain name is confusingly similar to Complainant’s P ZERO mark because the mere addition of a hyphen between terms and the generic top-level domain “.org” is insufficient to differentiate the disputed domain name from the mark pursuant to Policy ¶ 4(a)(i). *See Red Hat, Inc. v. Haecke*, FA 726010 (Nat. Arb. Forum July 24, 2006) (concluding that the <redhat.org> domain name is identical to the

complainant's RED HAT mark because the mere addition of gTLD was insufficient to differentiate the disputed domain name from the mark); *see also Health Devices Corp. v. Aspen S T C*, FA 158254 (Nat. Arb. Forum July 1, 2003) (“[T]he addition of punctuation marks such as hyphens is irrelevant in the determination of confusing similarity pursuant to Policy ¶ 4(a)(i).”).

RIGHTS AND LEGITIMATE INTERESTS: *Policy ¶ 4(a)(ii).*

I FIND THE ISSUE ON THIS ELEMENT IN FAVOR OF COMPLAINANT.

I am reminded that Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the <p-zero.org> domain name under Policy ¶ 4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests. *See Swedish Match UK Ltd. v. Admin, Domain*, FA 873137 (Nat. Arb. Forum Feb. 13, 2007) (finding that once a *prima facie* case has been established by the complainant under Policy ¶ 4(c), the burden then shifts to the respondent to demonstrate its rights or legitimate interests in the disputed domain name); *see also ALPITOUR S.p.A. v. Abloushi*, FA 888651 (Nat. Arb. Forum Feb. 26, 2007) (finding that Policy ¶ 4(a)(ii) requires that the complainant must show that the respondent has no rights to or legitimate interests in the subject domain name and that once the complainant makes this showing, the burden of production shifts to the respondent to rebut the complainant's allegations).

Complainant alleges that Respondent is not commonly known by the <p-zero.org> domain name, because the WHOIS information lists “Parisa Tabriz” as the registrant of the <p-zero.org> domain name, and no other evidence in the record indicates that Respondent is commonly known by the disputed domain name. Complainant also asserts that it has not authorized or licensed Respondent to register or use a domain name incorporating Complainant's entire P ZERO mark. I agree that Respondent is not commonly known by the <p-zero.org> domain name, I find that Respondent does not have rights or legitimate interests in the domain name pursuant to Policy ¶ 4(c)(ii). *See M. Shanken Commc'ns v. WORLDTRAVELERSONLINE.COM*, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy ¶ 4(c)(ii) based on the WHOIS information and other evidence in the record); *see also St. Lawrence Univ. v. Nextnet Tech*, FA 881234 (Nat. Arb. Forum Feb. 21, 2007) (concluding a respondent has no rights or legitimate interests in a disputed domain name where there is no evidence in the record indicating that the respondent is commonly known by the disputed domain name).

Complainant also alleges that Respondent's <p-zero.org> domain name does not resolve to an active website and that Respondent has not made any demonstrable preparations to use the disputed domain name for any purpose since registering it on August 21, 2006. I find that Respondent's failure to use or make any demonstrable preparations to use the <p-zero.org> domain name in connection with a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii) suggests that Respondent has no rights or legitimate interests in the disputed domain name. *See Hewlett-Packard Co. v. Shemesh*, FA 434145 (Nat. Arb. Forum Apr.

20, 2005) (finding that a respondent's non-use of a domain name that is identical to a complainant's mark is not a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii)); *see also Beat the Bookstore, LLC v. May Enter.*, FA 589501 (Nat. Arb. Forum Dec. 19, 2005) (finding that the respondent's "protracted period of inaction" in its development of the disputed domain name indicated that the respondent had no rights or legitimate interests in the disputed domain name).

REGISTRATION AND USE IN BAD FAITH:

I FIND THE ISSUES ON THIS ELEMENT IN FAVOR OF COMPLAINANT.

Even if Respondent has not violated any of the factors listed in Policy ¶ 4(b), I find that, based on the totality of the circumstances, Respondent's registration and use of the <p-zero.org> domain name is indicative of bad faith under Policy ¶ 4(a)(iii). *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) ("[T]he examples [of bad faith] in Paragraph 4(b) are intended to be illustrative, rather than exclusive."); *see also CBS Broad., Inc. v. LA-Twilight-Zone*, D2000-0397 (WIPO June 19, 2000) ("[T]he Policy expressly recognizes that other circumstances can be evidence that a domain name was registered and is being used in bad faith.").

Complainant alleges that Respondent's <p-zero.org> domain name has never resolved to any active content since its registration on August 21, 2006. I hold that Respondent's non-use of the disputed domain name for over seven months constitutes bad faith registration and use pursuant to Policy ¶ 4(a)(iii). *See Clerical Med. Inv. Group Ltd. v. Clericalmedical.com*, D2000-1228 (WIPO Nov. 28, 2000) (finding that merely holding an infringing domain name without active use can constitute use in bad faith); *see also Disney Enters. Inc. v Meyers*, FA 697818 (Nat. Arb. Forum Jun. 26, 2006) (holding that the non-use of a disputed domain name for several years constitutes bad faith registration and use under Policy ¶ 4(a)(iii)).

DISCUSSION

Paragraph 15(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

Identical and/or Confusingly Similar

I find the issues in favor of Complainant.

Rights or Legitimate Interests

I find the issues in favor of Complainant.

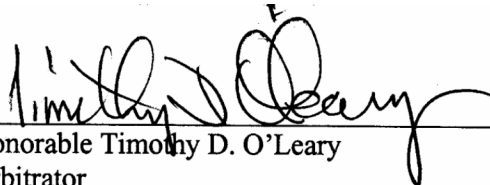
Registration and Use in Bad Faith

I find the issues in favor of Complainant.

DECISION

Having established all three elements required under the ICANN Policy, I conclude that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <p-zero.org> domain name be **TRANSFERRED** from Respondent to Complainant.



Honorable Timothy D. O'Leary
Arbitrator
Timothy D. O'Leary, Panelist
Dated: April 12, 2007

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