

PIRELLI & C. S.p.A.)
Via G. Negri 10, Milano)
ITALY)

(Complainant))

v.)

Parisa Tabriz)
111 Rengstorff Ave. #139)
Mountain View)
94043, CA)

(Respondent))

Domain Names In Dispute:

P-ZERO.ORG

Case Number:

FA0702000921798

RESPONSE

[1.] Respondent received a Notification of Complaint and Commencement of Administrative Proceeding on March 5, 2007. The Notification stated that Complainant had submitted a Complaint for decision in accordance with the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved by ICANN on October 24, 1999 (ICANN Policy), and the Rules for Uniform Domain Name Dispute Resolution Policy (ICANN Rules), adopted by ICANN on August 26, 1999 and approved by ICANN on October 24, 1999, and the National Arbitration Forum (NAF) Supplemental Rules (Supp. Rules). ICANN Rule 4.

[2.] RESPONDENT INFORMATION

- [a.] Name: *Parisa Tabriz*
- [b.] Address: *111 N. Rengstorff Ave #139,
Mountain View, CA 94043*
- [c.] Telephone:
- [d.] Fax:
- [e.] E-Mail: *tabriz@uiuc.edu*

NO AUTHORIZED REPRESENTATIVE

ICANN Rule 5(b)(ii).

The Respondent's preferred method for communications directed to the Respondent in the administrative proceeding: ICANN Rule 5(b)(iii).

Electronic-Only Material

- [a.] Method: *email*
- [b.] Address: *tabriz@uiuc.edu*
- [c.] Contact: *Parisa Tabriz*

Material Including Hard Copy

- [a.] Method: *post*
- [b.] Address/Fax: *111 N. Rengstorff Ave. #139
Mountain View, CA 94043*
- [c.] Contact: *Parisa Tabriz*

The Respondent chooses to have this dispute heard before a single-member administrative panel as stated in the Complainant's Complaint ICANN Rule 5(b)(iv).

[3.] RESPONSE TO FACTUAL AND LEGAL ALLEGATIONS MADE IN COMPLAINT

This Response specifically responds to the statements and allegations contained in the Complaint and includes any and all bases for the Respondent to retain registration and use of the disputed domain name. ICANN Rule 5(b)(i).

[a.] ICANN Rule 3(b)(ix)(1); ICANN Policy ¶ 4(a)(i).

In response to ICANN Policy 4(a)(i), Parisa Tabriz (the "respondent") disagrees that P-ZERO.ORG (the "domain") is identical to P ZERO, PZERO, or ZERO (the "trademarks") that Pirelli & C.S.p.A. (the "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. [See *Avery Dennison Corporation v. Jerry Sumpton* (9th Cir. 1999) 189 F.3d 868, 871]. 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, as demonstrated in the case of PUEBLO.ORG and PUEBLO.COM [See *Pueblo International, Inc. vs. Pueblo On-Line* (FA0007000095250)].

[b.] ICANN Rule 3(b)(ix)(2); ICANN Policy ¶ 4(a)(ii).

Respondent purchased the domain because of an innocuous desire to develop a personal webpage. For years, respondent has used the AOL instant messenger (AIM)¹ username "purple0yster", a reference to a fictitious deity first presented in the USENET newsgroup alt.athiesm². When attempting to create the AIM username "thepurpleoyster", she learned the name was already taken by another user in the AOL

¹ AOL Instant Messenger (AIM). Download and information at <http://www.aim.com>.

² Usenet alt.athiesm group. Archives at <http://groups.google.com/group/alt.atheism>.

system. In response, respondent replaced the "o" with a zero to create the username thepurple0yster. Respondent developed a digital identity with this username among friends and wanted to create an associated personal webpage using the abbreviated domain p0.org. Unfortunately, this domain was already in use, as was pzero.org, so respondent purchased p-zero.org as a third consolation.

[c] ICANN Rule 3(b)(ix)(2); ICANN Policy ¶ 4(a)(iii).

Respondent asserts that she neither registered, nor is using the domain in bad faith. The domain registrar, GODADDY.COM, supplies a default page with associated advertising links on all domains that it sells. Until a domain owner either uploads their own web content using a GODADDY.COM web hosting service or establishes Domain Name Service (DNS) forwarding to an alternate web server, this default content will be displayed when the web page is resolved on the Internet. Respondent asserts that she was in the process of establishing external web hosting and developing content for the website when complainant filed with NAF.

Complainant claims that respondent is using the domain to "ensnare unsuspecting Internet users," however, respondent has no related business interests (or affiliations with those that do) to Pirelli & C.S.p.A. She has also received no payment from any of the advertised links provided by GODADDY.COM at this domain. Respondent had no prior knowledge of either Pirelli & C.S.p.A. or their products before the filing of this UDRP complaint.

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. vs. Intellifone Corp (FA96356)* and *Gallup, Inc vs. Amish Country Store (FA96209)*. In both of these cases, the respondent had 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 web pages, blogs, and in general, publishing personal content on the Internet, individuals with noncommercial interest in a domain should not be expected to have strong evidence correlating their own identity with a particular domain name.

Complainant claims that respondent has been passively holding the domain for almost a year, just one of the blatant exaggerations made in this UDRP filing. Respondent has in fact owned the domain for just days over 6 months when Pirelli & C.S.p.A. first filed their UDRP complaint. Complainant cites both *America Online, Inc. v. Kloszewski, (FA 204148)* and *Pharmacia & Upjohn AB v. Romero, (D2000-1273)* as evidence that passive holding is by itself proof of no genuine interest. In both of these decisions, however, the respondent demonstrated both a commercial interest in the domain and bad faith usage by attempting to sell the domain to the respective complainant. Considering Parisa Tabriz has a noncommercial interest in the domain and never contacted Pirelli & C.S.p.A. for any reason prior to this complaint, these findings are not directly applicable. Additionally, it has been previously decided that in some cases, passive holding is not by itself evidence of bad faith use [see *Minnesota Mining and Manufacturing Company v. Mark Overbey (D2001-0727)* where respondent established a plausible explanation for his delay in establishing a web site and passive holding was not considered bad faith usage.]. Complainant cites *Telstra Corporation Limited v. Nuclear Marshmallows (D2000-0003)* to demonstrate that it is possible in some situations for passive holding alone to constitute bad faith use. However, in *Telstra*, the finding of improper use was based on the respondent providing no evidence of actual or contemplated fair use of the domain, actively taking steps to conceal his identity, and failing to correct falsely provided contact details. This behavior is not similar to that of the respondent in this filing. Parisa Tabriz has provided explanation of her intent with the domain and has promptly corrected any outdated contact information.

Respondent claims she has only noncommercial interest in using the domain, pursuant to ICANN Policy ¶ 4(c)(iii). Respondent has no prior history of domain disputes or being accused of acting as a "cyber-squatter" and has reaped no payment from ads listed at the current page resolved at the domain. Additionally, respondent never contacted Pirelli & C.S.p.A. prior to their filing of the complaint regarding selling the domain. This is clear evidence that she lacked any financial motive in registering the domain. Respondent has never transferred or sold any of the domains she owns (SLASHP.ORG, ASIRAP.NET, P-ZERO.ORG). Respondent is actively using SLASHP.ORG and ASIRAP.NET for noncommercial

websites, providing evidence that she would in all likelihood use P-ZERO.ORG in a similar fashion. Additionally, respondent registered the AOL instant messaging username thepurple0yster, the inspiration for the domain, years prior to the filing of this complaint, respondent's filing of the P ZERO trademark, and without prior knowledge of Pirelli & C. S.p.A.

Finally, complainant has registered and is currently using many other domains related to the trademark. At a minimum, they are using 23 related domains that they have listed in their complaint (PZEROCOLLECTION.COM, PIRELLIPZERO.COM, PIRELLIPZERO.IT, PZEROWEB.EU, PZEROWEB.EU, 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, PZERO-ASSOLUTO.IT). Given that complainant is actively using these other domains that reflect their trademark, respondent has not prevented complainant's use of their trademark and ICANN Policy 4(b)(ii) should not apply [See *Minnesota Mining and Manufacturing Company v. Mark Overbey (D2001-0727)* where it was decided that complainant's existing ownership of a domain related to the trademark was sufficient to reflect their mark as a domain name.].

In summation, complainant's burden of proof has not been satisfied according to ICANN Rule 4(a)(i, ii, iii). The domain is not identical to the complainant's trademark, given that the gTLD is associated with noncommercial entities [Rule 4(a)(i)]. Respondent has established that her interest in the domain was noncommercial and related to an AOL instant messenger username she is recognized as using among friends [Rule 4(a)(ii)]. Finally, respondent neither registered or is using the domain in bad faith based on no history of passive holding or accusation of cyber-squatting, no prior attempt to contact the 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.

[5.] RESPONSE TRANSMISSION

The Respondent asserts that a copy of the Response, as prescribed by NAF's Supplemental Rules, has been sent or transmitted to the Complainant, in accordance with ICANN Rule 2(b), ICANN Rule 5(b)(vii); NAF Supp. Rule 5.

[6.] The Respondent respectfully requests that the Administrative Panel denies the remedy requested by the Complainant.

[7.] CERTIFICATION

Respondent certifies that the information contained in this Response is to the best of Respondent's knowledge complete and accurate, that this Response is not being presented for any improper purpose, such as to harass, and that the assertions in this Response are warranted under these Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respectfully Submitted,

Parisa Tabriz

Parisa Tabriz

March 15, 2007