

Decision for dispute CAC-UDRP-105489

Case number	CAC-UDRP-105489
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Time of filing	2023-06-07 09:45:54
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Domain names	grezioligroup.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Grazioli Cesare S.r.l.
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Complainant representative

Name	Avv. Niccolò Ferretti
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Respondent

Name	John Stokes
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of many trademarks containing or consisting of GRAZIOLI, e.g. Italian Trademark Registration No. 302015902343185 GRAZIOLI GROUP, registered on April 20, 2015, for goods and services in the classes 7 and 37.

FACTUAL BACKGROUND

It results from the Complainant's undisputed allegations that it is an Italian company which for more than 60 years has been producing tailor-made machines and plants for processing steel tubes and non-ferrous metals. In light of the Complainant's significant investments in R&D, marketing, sales and distribution channels, it has become a well-known trademark in its field. Over the years, it has become more and more strategic in order to create comprehensive products and services for its international customers and partners.

The Complainant further contends it is well known in its commercial sector and has many prestigious business partners in over 100 countries.

Furthermore, the Complainant uses the domain name < grezioligroup.com > to connect to its official website for advertising and commercializing its products.

The disputed domain name < grezioligroup.com > was registered on March 20, 2023 and resolves to an inactive webpage.

In addition, the undisputed evidence provided by the Complainant proves that the disputed domain name, i.e. has been used to send emails, while pretending to be a Complainant's employee, in order to receive undue payment.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark, and that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various trademarks containing or consisting of GRAZIOLI, e.g. Italian Trademark Registration No. 302015902343185 GRAZIOLI GROUP, registered on April 20, 2015, for goods and services in the classes 7 and 37.

The disputed domain name is composed by the term "GREZIOLIGROUP", which is almost an identical reproduction of the Complainant's trademark GRAZIOLI GROUP, the only difference between the term and mark being that the first vocal "a" has been replaced by the vocal "e" in the disputed domain name. This Panel emphasizes that the case at hand is a typical case of "typosquatting", which occurs when a domain name consists of a misspelling of the complainant's trademark. According to the consensus view of UDRP panels, a domain name which consists of a common, obvious, or intentional misspelling of a trademark normally is found to be confusingly similar to such trademark, where the domain name contains sufficiently recognizable aspects of the relevant mark, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") at section 1.9.

Finally, the generic Top-Level Domain ("gTLD") ".com" of the disputed domain name is typically disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand

and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark GRAZIOLI GROUP, *e.g.*, by registering the disputed domain name comprising the said trademark almost entirely, being a misspelling of the Complainant's trademark GRAZIOLI GROUP.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

In addition, no content is displayed on the website to which the disputed domain name resolves. Furthermore, the Respondent has not demonstrated any bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue in the sense of paragraphs 4(c)(i) and (iii) of the Policy.

In addition, it results from the undisputed evidence before the Panel that the disputed domain name has been used for sending fraudulent emails. UDRP panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent (see WIPO Overview 3.0 at section 2.13.1 with further references). In the case at hand, the Complainant submitted substantial evidence of such illegal activities by providing email correspondence sent from email accounts under the disputed domain name. This email correspondence has been signed in the name of a person, pretending to be a Complainant's employee. The Panel considers this evidence as sufficient to support the Complainant's credible claim of the Respondent's illegal activity.

It is acknowledged that once the Panel finds a prima facie case is made by a Complainant, the burden of production under the second element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain names.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The disputed domain name does not resolve to an active website, however it has been used for sending fraudulent email pretending to be the Complainant's employee.

Finally, this Panel agrees with the approach taken by previous UDRP panels stating that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending fraudulent email, phishing, identity theft, or malware distribution. Many such cases involve the respondent's use of the domain name to send deceptive emails, *e.g.*, to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers (see WIPO Overview 3.0 at section 3.4). As explained above, it results from the undisputed evidence submitted by the Complainant that the disputed domain name has been used for sending fraudulent emails pretending to be the Complainant's employee, in order to solicit payment of fraudulent invoices and receive undue payment. The use of the disputed domain name in such an illegal scheme additionally demonstrates that the Respondent not only knew of the Complainant, its business and marks, but also attempted to pass itself off as the Complainant.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

- 1. grezioligroup.com: Transferred

PANELLISTS

Name Dr. Federica Togo

DATE OF PANEL DECISION 2023-07-18

Publish the Decision