Decision for dispute CAC-UDRP-100443

Case number	**CAC-UDRP-100443**
Time of filing	**2012-06-20 15:33:34**
Domain names	**metzeler.info**

Case administrator

Name	**Tereza Bartošková (Case admin)**

Complainant

Organization	**Pirelli Tyre S.p.A.**

Complainant representative

Organization	**FASANO-Avvocati**

Respondent

Name	**David Danier**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name METZELER.INFO (the 'Domain Name').

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the METZELER brand, and has registered trade mark rights for METZELER in a substantial number of territories across the world, including the European Union, the United States of America and in Canada (according to the WHOIS the Respondent's address is in Canada). The Canadian trade mark for METZELER is registered in the name of the Complainant under number 436304 in classes 07, 08, 12, 18 and 25.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

I. FACTUAL GROUNDS
Metzeler is a well-known motorcycle tyre company founded in 1863 in Munich, Germany by Robert Friedrich Metzeler. The company originally manufactured a variety of rubber and plastic products, expanding into aviation in 1890 and automotive and motorcycle tyres in 1892. After World War II Metzeler focused on motorcycle tyre production. As a result of nearly 150 years of experience in motorcycle tyre development and supply to the world's leading manufacturers, Metzeler has become a well-known brand worldwide.

Metzeler has been part of Pirelli Group since 1986 and the relevant trade marks are owned by Pirelli Tyre S.p.A, the Complainant.

A compliant Complaint was filed by the Complainant on 21 June 2012.

The Respondent failed to submit a Response within the time frame required, or at all, and a Notification of Respondent's Default was therefore issued by the Czech Arbitration Court on 17 July 2012.

On 17 July 2012, having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer, of Palmer Biggs Legal - Solicitors, as the Panel in these UDRP proceedings.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

The Domain Name "metzeler.info" was registered on November 17, 2011, which post dates the relevant trade marks owned by the Complainant.

The disputed Domain Name should be transferred to the Complainant for the following reasons.

- Identity and/or confusing similarity of the disputed Domain Name with the trade marks of the Complainant: The disputed Domain Name is identical and/or confusingly similar to the Complainant's trade marks, because it consists of the word "METZELER". The Domain Name "metzeler.info" can be confused with the trade mark registrations of Pirelli Tyre S.p.A., which are valid in numerous countries worldwide. Further, the similarity of the disputed Domain Name to the Complainant's marks is likely to lead to confusion and/or association on the part of Internet users.

- Lack of rights or legitimate interests of the Respondent in respect of the disputed Domain Name: The Respondent has no rights or interests in the Domain Name. The Complainant has no relationship with the Respondent whatsoever. Pirelli Tyre S.p.A. has never authorised the Respondent to use the Domain Name or any other domain name. Additionally, there is no indication that the Respondent has any legitimate interest in the Complainant's marks according to searches done by the Complainant on the web sites of the Italian Patent and Trade mark Office (UIBM), the EU's Office of Harmonisation for the Internal Market (OHIM), WIPO, and the Canadian Intellectual Property Office (CIPO). The Domain Name resolves to a website containing sponsored links only. There is no evidence that the Respondent's use of "metzeler.info" is either a bona fide offering of goods or services or a legitimate noncommercial or fair use, without intent for commercial gain. Finally, there is no evidence that the Respondent has been commonly known by the Domain Name "metzeler.info".

- Registration and use of the disputed Domain Name in bad faith: Respondent's bad faith is clearly evident from the fact that he has registered a domain name which consists of the well-known mark of the Complainant. Taking into account the vast and widespread advertising campaigns carried out by the Complainant in the past, it is unlikely that the registration of the Domain Name may be attributed to mere chance. More likely it was done in full awareness and intent to exploit the reputation and goodwill of the Complainant and its marks. Furthermore, the disputed Domain Name resolves to a website containing sponsored links, which makes it clear to the Complainant that the Domain Name has been registered and is being used with a view of commercial gain. Finally, the Respondent's bad faith is also demonstrated by the fact that he offered to transfer the Domain Name for valuable consideration in excess of his out-of-pocket expenses which relate to the Domain Name.

Therefore, having regard to the above, the Domain Name should be transferred to Pirelli Tyre S.p.A..

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trade mark 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 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 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

Paragraph 4(a)(i)of the Policy

The Panel finds the Domain Name virtually identical and confusingly similar to the METZELER trade mark in which the Complainant has registered rights.

Paragraphs 4(a)(ii) and 4(a)(iii) of the Policy

The Respondent failed to file an administratively compliant (or any) response.

The Panel finds from the facts put forward that:

- The Respondent has no rights or legitimate interests in respect of the Domain Name. There was nothing put forward in the case file which might suggest otherwise.

- The Domain Name has been registered and is being used in bad faith. The Panel believes from the facts that the Respondent had the Complainant in mind when registering the Domain Name, and in particular the Complainant's METZELER trade mark, which is registered in numerous territories across the world including Canada (the home territory of the Respondent according to the WHOIS database). Further, the Panel finds that the Domain Name has been held by the Respondent with the purpose of selling the Domain Name to the Complainant for a sum of money (the Respondent or its representative requested Euros 2,000), a sum which is no doubt in excess of the Respondent's out of pocket expenses related to the Domain Name (paragraph 4(b)(i)of the Policy). The Respondent also holds the name to attract Internet users for commercial gain, by creating a likelihood of confusion with the complainant's METZELER trade mark (paragraph 4(b)(iv)of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **METZELER.INFO**: Transferred

PANELLISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2012-08-01