

Decision for dispute CAC-UDRP-105486

Case number	CAC-UDRP-105486
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Time of filing	2023-06-07 09:44:15
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Domain names	grazioligroup.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	Loretta Shaw
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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 owner of three trademark registrations for the sign “Grazioli”, including the following ones:

- Italian Trademark Registration No. 302015902343185, filed on April 9, 2015, and registered on April 20, 2015, for the classes 7 and 37 of the Nice Classification;
- Italian Trademark Registration No. 302015000030346, filed on July 3, 2015, and registered on December 27, 2016, for the classes 7 and 37 of the Nice Classification;
- International Trademark Registration No. 1288702, registered on November 2, 2015, for the classes 7 and 37 of the Nice Classification.

The Complainant is also the owner of the domain name <grazioligroup.com>.

FACTUAL BACKGROUND

The Complainant in the present proceedings is Grazioli Cesare S.r.l., an Italian company with register office in Via Cornali, 12/16, 25013, Carpendolo (BS), Italy.

For more than 60 years the company 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, Grazioli Cesare S.r.l. has in the view of Complainant become a well-known trademark in its field.

The website <https://grazioligroup.com/en/> is the official website of the Complainant

In May 2023, the Complainant became aware that, on April 21st, 2023 the Respondent had registered the Disputed Domain Name <grazoilgroup.com>, without the Complainant's authorization.

The Disputed Domain Name registered by the Respondent, is in the view of Complainant identical, or at least confusingly similar, to the trademarks "Grazioli", on which the Complainant has rights and to its domain name <grazioligroup.com>. In particular, analyzing both the signs, they appear perfectly superimposable.

The Disputed Domain Name "grazoilgroup.com" incorporates almost the entire trademarks of the Complainant, i.e. "Grazioli".

The Complainant states that Respondent is not a licensee, nor an authorized agent of the Complainant, nor it has been, in any other way, authorized to use the Complainant's trademarks. The Respondent has no relationship with the Complainant.

The Complainant has not licensed or otherwise permitted the Respondent to use its trademarks or register the Disputed Domain Name incorporating its trademark. In particular, it is important for Complainant to note that the Respondent has never registered "grazoilgroup.com" as a trademark, but it has only created the disputed domain name in order to mislead the public.

The Disputed Domain Name is not used and the Respondent has not made any use of the Disputed Domain Name since its registration. Moreover, the website www.grazoilgroup.com results to be unreachable. Such circumstance confirm in the view of Complainant that the Respondent has no demonstrable plan to use the Disputed Domain Name and has not since its registration.

For all the above-mentioned reasons, the Respondent is in the view of Complainant not making a legitimate non-commercial use or a fair use of the Disputed Domain Name without the intent of commercial gain, of misleadingly diverting consumers or tarnishing the trademark of the Complainant.

For all of the foregoing reasons, the Complainant concludes that Respondent has no rights or legitimate interests in respect of the domain name pursuant to Article 3 (b) (ix) of the UDRP Rules.

The Complainant states that in light of the use of the trademarks "Grazioli" for many years, the amount of advertising, the intensive use of the trademarks in more than 100 countries, the Respondent could not have ignored the existence of the Complainant's trademarks, with which the domain name is confusingly similar.

In this regard, the registration of the contested domain name made by the Respondent, even though the previous acknowledgement of the Complainant's trademarks, testifies Respondent's bad faith.

The website related to the contested domain name is not active, nor it has been used in connection with an active website, but it is passively held, as per the so called 'passive holding doctrine'.

Complainant states, that the circumstance that "grazoilgroup.com" resolves in an unreachable website, leads to a finding of bad faith.

Under these circumstances, considering also the identity / confusing similarity of the disputed domain name with the trademarks "Grazioli", as well as with the Complainant's domain name <grazioligroup.com>, the Complainant finds that there would be no reasonable grounds for the Respondent to argue that, through the Disputed Domain Name, it was intending to pursue a legitimate activity.

Furthermore, the Complainant has been informed that people unrelated to the company, posing as company employees, sent numerous emails to many customers of the company in order to deliberately create confusion and become aware of confidential data.

In order to deceive the customers of the company, unidentified people, under false identities of imaginary employees of Grazioli Cesare S.r.l. (Mr. Moura), sent many e-mails from e-mail addresses with the domain name <grazoilgroup.com> (pedro@grazoilgroup.com), identical to that of the Respondent and, therefore, confusingly similar to the one registered by the Complainant.

Furthermore, to deceive the customers in the best possible way, the authors of these emails also use the trademarks "Grazioli" owned by the Complainant along with the name of the fictitious identity of the fake company employees.

It is clear in the view of Complainant that the purpose that led the Respondent to register the Disputed Domain Name was primarily to disrupt the business of Complainant, a world renowned and well respected company in its sector: the Respondent did not intend to use the domain name in connection with any legitimate purpose, but has only used the domain name as part of a fraudulent scheme.

Complainant's contentions are summarised above.

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. Identical or Confusingly Similar

The Panel acknowledges that the Complainant has established rights in the GRAZIOLI trademark.

Disregarding the gTLD ".com", the Disputed Domain Name incorporates a very similar word, which is very hard to distinguish from the trademark of Complainant. Considering the further descriptive second part "Group" of the Disputed Domain Name it is even more difficult to see the differences in the words "Grazioli" and "Grazoil", because the more relevant beginning of the Disputed Domain Name "Graz" is identical.

The Panel further notes that the addition of the descriptive terms "Group", which relate directly to Complainant's used domain Name <grazioligroup.com>, intensifies the confusingly similarity.

The Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in the Grazioli trademark and in demonstrating that the Disputed Domain Name is confusingly similar to its trademark.

2. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests in the Disputed Domain Name. Once such a prima facie case is made, the respondent carries the burden of producing evidence in support of its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant asserts that it has not authorized the Respondent to use its trademark, and there is no evidence to suggest that the Respondent has used, or undertaken any demonstrable preparations to use, the Disputed Domain Name in connection with a bona fide offering of goods or services.

Thus, the Complainant has established its prima facie case with satisfactory evidence.

The Respondent did not file a formal response and has therefore failed to assert factors or put forth evidence to establish that it enjoys rights or legitimate interests in the Disputed Domain Name. As such, the Panel concludes that the Respondent has failed to rebut the Complainant's prima facie showing of the Respondent's lack of rights or legitimate interests in the Disputed Domain Name and that none of the circumstances of paragraph 4(c) of the Policy is applicable in this case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Names pursuant to paragraph 4(a)(ii) of the Policy.

3. Registered and Used in Bad Faith

The Complainant states that in light of the use of the trademarks “Grazioli” for many years, the amount of advertising, the intensive use of the trademarks in more than 100 countries, the Respondent could not have ignored the existence of the Complainant’s trademarks, with which the domain name is confusingly similar.

The Panel agree with that view of Complainant.

Furthermore the Disputed Domain Name is coupled with an inactive website, which in this case is evidence of bad faith registration and use.

The website related to the contested domain name is not active, nor it has been used in connection with an active website, but it is passively held, as per the so called ‘passive holding doctrine’.

As a matter of fact, the circumstance that “grazoilgroup.com” resolves in an unreachable website, leads to a finding of bad faith. In this regard, factors that have been considered relevant in applying the passive holding doctrine, giving close attention to all circumstances of the Respondent’s behavior, include: (i) the degree of distinctiveness or reputation of the complainant’s trademark, (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details, and (iv) the implausibility of any good faith use to which the domain name may be put.

Pursuant to paragraph 4(b)(iv), this is evidence of the registration and use of the Disputed Domain Name in bad faith for purposes of paragraph 4(a)(iii) of the Policy. Under these circumstances, considering also the identity / confusing similarity of the Disputed Domain Name with the trademarks “Grazioli”, as well as with the Complainant’s domain name <grazioligroup.com>, the Panel finds that there would be no reasonable grounds for the Respondent to argue that, through the Disputed Domain Name, it was intending to pursue a legitimate activity.

Furthermore, people unrelated to the Complainant, posing as company employees, of Complainant sent numerous emails to many customers of the Complainant in order to deliberately create confusion and become aware of confidential data.

In order to deceive the customers of the Complainant, unidentified people, under false identities of imaginary employees of Grazioli Cesare S.r.l. (Mr. Moura), sent e-mails from e-mail addresses with the domain name <grazoilgroup.com> (pedro@grazoilgroup.com), identical to that of the Respondent and, therefore, confusingly similar to the one registered by the Complainant.

Furthermore, the authors of these emails also use the trademarks “Grazioli” owned by the Complainant along with the name of the fictitious identity of the fake company employees of Complainant.

It is clear that the purpose that led the Respondent to register the Disputed Domain Name was primarily to disrupt the business of Complainant, a world renowned and well respected company in its sector: the Respondent did not intend to use the Disputed Domain Name in connection with any legitimate purpose, but has only used the Disputed Domain Name as part of a fraudulent scheme. In view of the above, the Respondent has clearly registered and used the Disputed Domain Name in bad faith.

Accordingly, the Panel finds that the Disputed Domain Name was 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. **grazoilgroup.com**: Transferred

PANELLISTS

Name Jan Schnedler

DATE OF PANEL DECISION 2023-07-01

Publish the Decision