

CPR Institute for Dispute Resolution

COMPLAINANT

Pierce Country Fire Protection District No. 6
Aka Central Pierce Fire & Rescue
17520-22nd Ave. E.
Tacoma, WA 98445
Telephone (253) 589-3226
Fax (253) 589-3772
E-mail quinnjoseph@qwest.net

File Number: CPR0309

Date of Commencement: March 18, 2003

Domain Name(s): "centralpierce.org"

Registrar: eNom Inc.

Arbitrator: avv. Luca Pusateri

vs.

RESPONDENT

MedPharmacy Inc
5400 S.University Dr., Suite 401
Davie, FL 33328
Telephone (800) 209-1689
Fax (866) 377-5727
E-mail unknown

Before avv. Luca Pusateri, Arbitrator

PROCEDURAL HISTORY

The Complaint was filed with CPR on March 18, 2003 and, after review for administrative compliance, served on the Respondent on March 18, 2003. The Respondent did not file a Response before April 7, 2003. I was appointed Arbitrator pursuant to the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules promulgated by the Internet Corporation for Domain Names and Numbers (ICANN). Upon the written submitted record including the Complaint, I find as follows:

FINDINGS

Respondent's registered domain name, "centralpierce.org", was registered with eNom Inc. on January 06, 2003. In registering the name, Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

IDENTITY/CONFUSING SIMILARITY: Complainant alleges that "centarpierce.org" is identical or confusingly similar to Complainant's trademark, service mark "Central Pierce Fire & Rescue" which applies to a municipal corporation and fire department located in the central portion of Pierce County, Washington.

Complainant alleges also that it has adopted the informal name of "Central Pierce Fire & Rescue" on its correspondence, its checks, its apparatus and in every way short of a legal name change. All the above is ongoing since 1990. For three years Complainant has used the domain name "centralpierce.org" but later this registration has expired.

Considered the above I find that Complainant service mark is known on the public since long time and therefore it could be considered as a service mark for exclusive use of Complainant.

I therefore conclude that the registered domain name is confusingly similar to Complainant's service mark.

RIGHTS AND LEGITIMATE INTERESTS: Complainant alleges that Respondent has no rights or legitimate interests with respect to the domain name at issue. In support for this allegation, Complainant notes that Respondent's web site suggests no reason why a domain name of "centralpierce" would be a trademark or service mark connected in any way to Medpharmacy Inc, a company that sells prescription drugs over the Internet.

UDRP Paragraph 4(c) provides that Respondent's rights or legitimate interests in a domain name may be demonstrated, without limitation, by showing that (a) before notice to Respondent of the dispute, Respondent has used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (b) Respondent has been commonly known by the domain name; or (c) Respondent is making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Even if I agree with the Complainant when it says that Respondent does not seem to be connected or known with the service mark "centralpierce", I would like to stress that the name "centralpierce" is a combination between two generic words and therefore it could be theoretically used by anyone if it not collides with rules and laws in protection of the trademark or of the service mark. I also find that the Respondent, before notice of the dispute, has used the domain name in connection with a bona fide offering of goods and services. Under Paragraph 4(c) of the UDRP this is evidence of a legitimate interest of the Respondent.

I therefore conclude that Respondent does have rights or legitimate interests with respect to the domain name at issue.

BAD FAITH: In support of the contention of Respondent's bad faith registration and use, Complainant notes only that the Respondent's agent has registered the name either to demand payment from "Central Pierce" to purchase back the domain name, or just because of the high number of "hits" received at this web site.

Paragraph 4(b) of the UDRP provides that indications of bad faith include, without limitation, (a) registration for the purposes of selling, renting or transferring the domain name to the Complainant for value in excess of Respondent's cost; (b) a pattern of registration in order to prevent Complainant from reflecting the mark in a corresponding domain name; (c) registration for the primary purpose of disrupting the business of a competitor; or (d) an intentional attempt to attract, for commercial gain, Internet users to Respondent's web site by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of Respondent's web site or location, or of a product or service on Respondent's web site or location.

I consider first of all that Complainant and Respondent are not two competitors. I also note that, at the moment, I do not have any evidence of the intention by the Respondent to sell, rent or transfer the domain name to the Complainant for value in excess of Respondent's cost. Considered the above I do not find that Complainant has succeeded in its burden of proving that the domain name at stake has been registered and is being used in bad faith

I therefore conclude that Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of my findings above that (a) the registered domain name is confusingly similar to Complainant's service mark; (b) Respondent does have rights or legitimate interests with respect to the domain name at issue; and (c) Respondent did not register and use the domain name in bad faith, as that term is defined in the ICANN Policy, I find in favor of the Respondent.

REMEDY

Complainant's request to transfer the domain name "centralpierce.org" is hereby DENIED.

Signature of Arbitrator
avv. Luca Pusateri

Date
Venice, April 24, 2003