



## DECISION

- The disputed domain name, <pmpiran.com>, is confusingly similar to Complainant's PMP mark, as the name fully incorporates the mark. The addition of the geographical term, "iran," does not distinguish the name from the mark because that term may simply lead internet users to assume wrongly that the disputed domain name represents an authorized extension of Complainant's services in the country of Iran.

- Respondent lacks rights or legitimate interests in the disputed domain name. Respondent is not licensed or otherwise permitted to use Complainant's mark and is not commonly known by the disputed domain name. Additionally, Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather,

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Respondent uses the disputed domain name illegitimately to directly compete with Complainant.

- Respondent registered and is using the disputed domain name in bad faith. Respondent registered the name with actual knowledge of Complainant's rights in the PMP mark. Moreover, Respondent attempts to attract, for commercial gain, internet users to the disputed domain name to directly compete with Complainant's operations.

B. Respondent

- The disputed domain name is not confusingly similar to Complainant's PMP mark because Respondent's potential customers have a high degree of knowledge and they can easily distinguish the name from the mark. Also, Respondent uses the disputed domain name for an entirely different class of services than those offered by Complainant.

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- Respondent has rights or legitimate interests in the disputed domain name. Respondent's services connected with the name are not unauthorized, as Respondent has been licensed by a certain third party that can authorize Respondent to provide training in Iran for Complainant's PMP courses.

- Respondent is commonly known by the disputed domain name, since it is an acronym for "Pishro Modiriat Piran Consulting," Respondent's business name. Additionally, Respondent is using the disputed domain name for a *bona fide* offering of services. Specifically, Respondent has used the disputed domain name since 2006 to offer consulting and training services, without the intent to compete with or disrupt Complainant's business. Further, Complainant has previously issued certificates to those who have completed Respondent's courses.

- Respondent did not register or use the disputed domain name in bad faith. The disputed domain name was not registered with the purpose

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to sell, rent or otherwise transfer it for commercial gain. Respondent has neither intended to disrupt Complainant's business nor divert users away from its website for commercial gain. Respondent also attempts to mitigate user confusion through the use of a disclaimer placed upon the disputed domain name's resolving website.

C. Complainant's Additional Submission

Moreover, Respondent's use of a stylized letter "M," which resembles the stylized letter "M "used within Complainant's PMI service mark, in captioning on that website provides further evidence of that bad faith.

D. Respondent's Additional Submission

- The disputed domain name and Complainant's mark are not confusingly similar, since the PMP mark is used only for certification services while Respondent uses the name in connection with consulting and training services. Moreover, professional, not general, internet users will access the disputed domain name and, given the

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clear labeling on the corresponding website, will be able to distinguish easily between the mark and name.

**- Respondent's company name had been registered before registration of the disputed domain name.** Respondent had no actual or constructive knowledge of Complainant's rights in its mark, as Respondent's company was engaged in consulting and not certification.

## DISCUSSION

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1)the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

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- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

### **Identical and/or Confusingly Similar**

Complainant's presentation of sufficient evidence of its registration with the USPTO for the PMP service mark convinces the Panel that Complainant has the requisite rights in that mark to satisfy Policy ¶ 4(a)(i). *See Home Depot Prod. Auth., LLC v. Samy Yosef*, FA 1738124 (FORUM July 28, 2017) ("Registration of a mark with the USPTO and other entities sufficiently establishes the required rights in the mark for purposes of the Policy."); *see also Paisley Park Enters. v. Lawson*, FA 384834 (FORUM Feb. 1, 2005) ("Complainant established rights in the PAISLEY PARK mark by registering it with the United States Patent and Trademark Office.").

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The disputed domain name, <pmpiran.com>, is not identical to the PMP mark in the Panel's opinion. However, the Panel concludes that the differences between the two, the addition of the descriptive geographical term, "iran," and the gTLD, ".com," do not prevent confusing similarity. As Complainant contends, the "iran" term might reasonably be interpreted by internet users as reflecting erroneously a subsidiary of Complainant based in the county of Iran. Also, the addition of the gTLD is of no moment at all, as all domain names must include this sort of suffix. Thus, the Panel finds the disputed domain name to be confusingly similar to Complainant's service mark. *See Avaya Inc. v. Esmail Sedaghat*, FA 1658322 (FORUM Mar. 7, 2017 ) finding <avayairan.com> to be confusingly similar to the AVAYA mark); *see also Geberit Holding AG v. Reza Chavoshan*, D2016-2137 (WIPO Dec. 20, 2016) finding <geberitiran.com> to be confusingly similar to the mark, GEBERIT); *see also Countrywide Fin. Corp. v. Johnson & Sons Sys.*, FA 1073019 (FORUM Oct. 24, 2007), "For purposes of making the comparison, generic top-level domains are not relevant..."

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As a result, the Panel finds that Complainant has demonstrated that the disputed domain name is identical or confusingly similar to a service mark in which Complainant has rights.

### Rights or Legitimate Interests

Though Complainant bears the ultimate burden with respect to this element required under the Policy, the consensus of prior UDRP decisions is that a complainant need present only a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name before the onus shifts to that respondent to come forward with evidence that it does have those rights or interests. *See Neal & Massey Holdings Ltd. v. Gregory Ricks*, FA 1549327 (FORUM Apr. 12, 2014) (“Under Policy ¶ 4(a)(ii), Complainant must first make out a *prima facie* case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests”); *see also Advanced International Marketing Corp. v. AA-1 Corp*, FA 780200 (FORUM Nov. 2, 2011).

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Complainant has established that the disputed domain name is confusingly similar to its mark and asserts that it has not authorized or licensed Respondent to use that mark for any purpose. Thus, the Panel finds that Complainant has set forth a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name, to which Respondent must offer rebuttal evidence.

Policy ¶ 4(c) indicates three alternative ways in which a respondent may assert successfully its rights or interests in a disputed domain name, thusly:

- (i) before any notice to it of the dispute, the respondent's use of, or 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

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(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a 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.

Respondent, Pishro Modiriat Piran Consulting, contends that it has been commonly known as the disputed domain name, <pmpiran.com>, for some time. In viewing Respondent's name, the Panel notes that the first initials of the first three terms in that name would form the acronym, "PMP." That acronym is consistent with the disputed domain name (as well as with Complainant's service mark). Also, if the remainder of the third term of Respondent's name, "iran," is added to said acronym, the result, "PMPiran," would be identical to the disputed domain name, less the inconsequential gTLD. Moreover, it is not in

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dispute that Respondent does business primarily (if not completely) within the country of Iran, which gives even more credence to Respondent's claim that it is commonly known as <pmpiran.com>. All of these circumstances lead the Panel to believe that it is entirely possible that Respondent has been commonly known as the disputed domain name.

Furthermore, Respondent contends that, in connection with the disputed domain name, it engages in a *bona fide* offering of services, i.e., consulting with and training people regarding project management. Respondent contends further that some of those people have ultimately received certificates from Complainant, and that, as a result, Complainant has been well aware of Respondent's existence and its disputed domain name ownership for years without complaint. Moreover, while Complainant contends that Respondent is a direct competitor of Complainant, Respondent counters that its services may be related but do not directly compete with those of Complainant.

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The Panel concludes that Respondent's contentions, particularly with respect to being commonly known as the disputed domain name, are sufficiently creditable as to answer Complainant's *prima facie* case, shifting the burden of proof with respect to the issue of rights and legitimate interests back onto Complainant.

It is also worth noting that, while conceding that the doctrine of laches should not be applied strictly in UDRP decisions, the Panel believes that the delay in this filing, allowing Respondent to own and use the disputed domain name for nearly *thirteen years* (i.e., from March 2006 to January, 2019), only increases the validity of Respondent's claims and the difficulty of meeting the burden placed upon Complainant concerning this issue. In that regard, Complainant's reliance upon the prior UDRP case, *Cable News Network LP v. Ahmed Latif*, FA 100709 (FORUM Dec. 31, 2001), to support its assertion that Respondent cannot claim to be commonly known as the disputed domain name is unpersuasive, in the Panel's opinion, largely because in that case the complaint was lodged within two years of the respondent's adoption of

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a company name, within one year of disputed domain name registration, and before the respondent had offered any goods or services under that name.

The Panel is aware that rulings under the Policy are based upon relatively limited submissions and without benefit of thorough review of all possible pertinent evidence, as the primary goal of the Policy is to ferret out rather clear-cut cases of cyber-squatting. *See Inter-Continental Hotels Corp. v. Pamirsoft Technologies*, D2011-1979 (WIPO Dec. 13, 2011) ("...the Policy [is] intended to address a fairly narrow category of abusive registration and use of domain names."); *see also National Alliance for the Mentally Ill v. Mary Rae Fouts*, FA 204074 (FORUM Dec. 6, 2003) ("Domain name registrations are basically first-come-first-served, and the purpose of the Policy is limited to rectifying cases of obvious cyber-squatting.").

Therefore, taking into account the circumstances delineated above and reviewing all of the contentions and available materials before it, the

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Panel finds that Complainant has failed to meet its burden to prove that Respondent has no rights or legitimate interests in the disputed domain name.

#### Registration and Use in Bad Faith

As the Panel has found above that Complainant has failed to prove that Respondent has no rights or legitimate interests in the disputed domain name, the Panel need not consider whether the disputed domain name was registered and is being used in bad faith. See *Immuno-Biological Labs, Inc. v. Dirk Boettcher*, FA 1611423 (FORUM May 12, 2015) ("Since Complainant fails to show Respondent lacks rights and interests in respect of the domain name, the Panel need not consider Respondent's bad faith under Policy ¶ 4(a)(iii).").

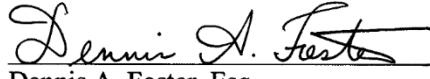
#### DECISION

Having not established all three elements required under the ICANN Policy, the Panel concludes that relief shall be DENIED.

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Accordingly, it is Ordered that the <pmpiran.com> domain name  
REMAIN WITH Respondent.

  
Dennis A. Foster, Esq.  
Arbitrator

Dennis A. Foster, Panelist

Dated: March 7, 2019

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