



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Pfizer Inc., A Delaware Corporation v. RE THIS DOMAIN FOR SALE - EMAIL

Case No. D2002-0409

1. The Parties

The Complainant is Pfizer Inc., a corporation of the State of Delaware, United States of America, having a principal place of business at 235 East 42nd Street, New York, New York, United States of America.

The Respondent is RE THIS DOMAIN FOR SALE - EMAIL located in Darien, Connecticut, United States of America.

2. The Domain Name and Registrar

The contested Domain Name is <phiser.com>.

The Registrar is eNom, Inc., (“eNom”) located at 16771 NE 80th Street, Suite 100, Redmond, Washington, United States of America.

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”), which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999 and approved on October 24, 1999 and in accordance with the ICANN Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) as approved on October 24, 1999 and by the World Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 (“the Supplemental Rules”).

The Complaint was filed with the WIPO Arbitration and Mediation Center (“the Center”) in e-mail form on April 30, 2002, and in hard-copy form on May 3, 2002 with Annexes 1-20 and the appropriate payment.

The Complainant's attorney stated that on April 30, 2002, he served a copy of the

Complaint itself together with a copy of the cover sheet, on the Respondent and registrar by first class mail, and on the registrar, presumably without the annexes, by e-mail.

Pursuant to paragraph 4(d) of the Policy, the Complainant selected the Center as the ICANN approved administrative dispute resolution service provider to administer this proceeding. Through the Complaint, the Complainant requested a single person panel.

After receiving the original Complaint, the Center, in accordance with paragraph 5 of the Supplemental Rules, determined whether the Complaint fully complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on May 3, 2002, the Center requested confirmation from the Registrar of information set forth in the Complaint relative to the contested domain name; specifically, contact and registrant information for that domain name, as well as whether the Registrar received a copy of the Complaint from the Complainant. The Center also requested the Registrar to specify: (a) whether the ICANN Policy applies to the contested domain name, (b) the current status of that domain name, and (c) whether the registrant has submitted, in its registration agreement, to the jurisdiction at the location of the principal office of the registrar for court adjudication of disputes concerning or arising from the use of the domain name.

Subsequently, on May 3, 2002 and supplemented by a communication dated May 14, 2002, the Registrar provided its Response to the Center through which the Registrar provided contact information pertinent to the contested domain name from its WHOIS database, confirmed that eNom, Inc. is the registrar of the domain name, stated that the language of the registration agreement is English, and stated that the domain name was then in an "lock" status. The Registrar also informed the Center that the Respondent, through its registration agreement, submitted to the jurisdiction at the location of the principal office of the registrar for court adjudication of disputes concerning or arising from the use of the domain name.

On May 15, 2002, the Center notified the Respondent of the filing of the Complaint, including an indication that the Center was forwarding a complete copy of the Complaint, both in e-mail and hard-copy form, to the Respondent (with the latter method forwarding a copy of all the annexes as well). The Complaint, and its accompanying documents, and all subsequent communications associated therewith were provided in the preferred manners and to the addresses as mandated by paragraphs 2(a), 2(b) and 4(a) of the Rules.

Hence, the notification to the Respondent having occurred on May 15, 2002, under paragraph 4(c) of the ICANN Policy, this administrative proceeding is deemed to have commenced on that date.

Having reviewed the Complaint and succeeding correspondence between the Center and the Registrar, in detail, the Panel agrees with the determination of the Center that the Complaint and its handling met the requirements of the Rules and the Supplemental Rules.

The Respondent was then provided with a 20 calendar day period, expiring on June 4, 2002 to file its Response with the Center and serve a copy of the Response on the Complainant.

As of June 4, 2002, the Center had not received a substantive Response to the Complaint from the Respondent; hence, the Center, in an email letter dated

June 11, 2002, notified the Complainant and Respondent of the default of the Respondent.

Accordingly, pursuant to the Rules and Supplemental Rules, by e-mail letter dated June 19, 2002, the Center contacted the undersigned, Mr. Peter L. Michaelson, Esq., requesting his service as a sole panelist for this dispute. Subsequently, on June 19, 2002, Mr. Michaelson accepted and returned, by facsimile to the Center, a fully executed Statement of Acceptance and Declaration of Impartiality and Independence. The Center, through an e-mail letter dated June 20, 2002, notified the parties of the appointment of Mr. Michaelson as sole panelist.

Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before July 4, 2002.

This dispute concerns one domain name, specifically: <phiser.com>.

The language of this proceeding is English.

4. Factual Background

A copy of the WHOIS registration record for the contested domain name appears in Annex 1 to the Complaint. As indicated on this record, the Respondent registered this domain name with eNom on February 21, 2002.

A. "Pfizer" Marks

The Complainant owns numerous United States and foreign trademark registrations for the mark "PFIZER" either in a stylized (script text located within an oval) or block letter form or as a formative (collectively the "Pfizer" Marks) on which this dispute is based. Many of the United States registrations are several decades old and hence have become incontestable. The Complainant has provided, in Annex 3 to the Complaint, a hard-copy printout of corresponding records from the United States Patent and Trademark Office web server for two of its pertinent United States registrations as well as of the registrations and renewal certificates themselves, and, in Annex 4 to the Complaint, a listing of all its "Pfizer" Marks, both in the United States and overseas. The two registrations are as follows:

- a) Pfizer (stylised)
US registration 626,088; registered May 1, 1956; renewed May 1, 1996

This mark was registered for use in connection with: "pharmaceutical preparations for human and veterinary use - namely, animal feed supplements, antibiotics, derivatives thereof and vitamins either alone or in combination" in international class 5. This mark claims first use and first use in inter-state commerce of November 30, 1951.

- b) PFIZER (block letters)
US registration 501,762; registered August 24, 1948; renewed August 24, 1988

This mark was registered for use in connection with various chemical compounds in international classes 1 and 5. This mark claims first use and first use in inter-state commerce of December 31, 1932.

B. The Complainant's activities

The Complainant is among the largest pharmaceutical enterprises in the world with global operations in more than 150 countries. Specifically, the Complainant discovers, develops, manufactures and markets leading prescription medicines for humans and animals, as well as many of the world's best-known consumer products. In that regard, the Complainant has expended substantial sums and extensive resources on the research, development and marketing of human pharmaceuticals and animal health products and maintains the world's largest privately funded biomedical research organization. In calendar year 2000, the Complainant reported revenues of US \$ 29.6 billion, with eight of its pharmaceutical products attaining sales of at least US \$1 billion each.

The "Pfizer" Marks, and particularly the mark "PFIZER", are universally recognized and relied upon as identifying the Complainant as the sole source of its pharmaceuticals, consumer health care products and animal health products, and as distinguishing the Complainant from other companies and the Complainant's products from the goods and services of others. The mark "PFIZER" symbolizes substantial goodwill to the Complainant and is an extremely valuable commercial asset of the Complainant both in the United States and around the world.

C. The Respondent's activities

The Respondent does not offer goods or services at a web site to which the contested domain name resolves. Rather, as of April 30, 2002, the Respondent uses that name solely as a link address to re-direct web traffic to the Respondent's travel web site at <sunfinder.com>. In that regard, the Complainant has provided a print-out of key pages of the <sunfinder.com> web site in Annex 10 to the Complaint.

5. Parties' Contentions

A. Complainant

i. Similarity

The Complainant contends that the contested domain name is confusingly similar to the Complainant's mark "PFIZER".

Specifically, the Complainant contends that the contested domain name, <phiser.com>:

- (i) is virtually identical to the Complainant's mark "PFIZER", the only difference being that the letters "f" and "z" in the mark "PFIZER" have been replaced by the letters "h" and "s" respectively, commonly known as a "typo" or "typo-squatting";
- (ii) consists predominantly of the term "phiser," the pronunciation of which is indistinguishable from the pronunciation of the Complainant's mark "PFIZER";
- (iii) was registered in order to confuse users who may attempt to locate the Complainant's web site by spelling its name phonetically;
- (iv) is confusingly similar to the domain name for the Complainant's own web site, i.e., <pfizer.com>; and

- (v) is so clearly similar to the Complainant's mark "PFIZER" and its tradename that the contested domain name is likely to cause confusion among the Complainant's customers.

Hence, the Complainant concludes that it has met the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

ii. Legitimacy

The Complainant contends that, for several reasons, that the Respondent has no rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

First, the Complainant states that its adoption and use of its mark "PFIZER" precedes the February 2002 date on which the Respondent registered the contested domain name. The Complainant takes the position that "[i]t is inconceivable that the Respondent did not have knowledge of the Complainant's famous PFIZER mark prior to the registration of the disputed domain name."

Second, the Complainant states that the Respondent is not and never has been a representative of the Complainant or licensed to use the mark "PFIZER". Furthermore, the Complainant contends that, upon its information and belief, the Respondent is not commonly known by the name "Phiser."

Third, as to the Respondent's use of the contested domain name for user re-direction, the Complainant contends that there is no connection between the term "phiser" and the Respondent's <sunfinder.com> web site. Furthermore, the Complainant contends that the Respondent's use of the term "phiser" to redirect traffic to <sunfinder.com> site likely occurs for a fee.

Fourth, the Complainant contends that the Respondent intentionally chose the term "Phiser" because it is confusingly similar to the mark "PFIZER", and as such cannot constitute a bona fide offering of services. In that regard, the Complainant contends that the Respondent's use of the contested domain name intentionally and misleadingly redirects or diverts Internet users away from the Complainant's web site in order to generate commercial gain for the Respondent and does not constitute a legitimate use.

Fifth, although the Respondent currently uses the contested domain name <phiser.com> solely as a link address to the <sunfinder.com> site, the Complainant contends that the Respondent registered the domain name with the intent of offering it for sale. Specifically, the inclusion of the phrase "THIS DOMAIN FOR SALE - EMAIL" in the registrant information and other contact fields of the Respondent's WHOIS record conveys the Respondent's intention, from the date of registration, to sell rather than make any legitimate use of the disputed domain name.

Sixth, the Complainant contends that the Respondent has purposefully selected the term "phiser," which contains a common typographical error relative to the Complainant's mark "PFIZER", in order to divert consumers, who are attempting to locate the Complainant's site, to the web site of its affiliate <sunfinder.com>. The term "Phiser" also has the same pronunciation as the Complainant's mark "PFIZER". Given this, the Complainant contends that the Respondent intends to profit from such ensuing confusion and, as a result, the Complainant has been and will continue to be deprived of visits by Internet users.

Lastly, the Complainant believes that the Respondent has registered the contested domain name explicitly for the purpose of making illegitimate or unfair use of the Complainant's mark "PFIZER". In that regard, the Complainant notes that there is no evidence of record that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain. Given this, the Respondent is instead misleading and diverting the Complainant's customers to the <sunfinder.com> web site, thereby creating a false impression that <phiser.com> and/or <sunfinder.com> are in some way associated with, or sponsored by, the Complainant.

Thus, the Complainant concludes that the Respondent has no rights or legitimate interests in the contested domain name pursuant to paragraph 4(a)(ii) of the Policy.

iii. Bad Faith

The Complainant contends that, also for various reasons, the Respondent has registered and is now using the contested domain name in bad faith.

As to bad faith registration, the Complainant contends that the Respondent, in common with the public, is well aware of the vast and valuable goodwill and reputation represented and symbolized by the mark "PFIZER". Hence, the Complainant contends that "[i]t is therefore inconceivable that the Respondent was not aware that the PFIZER mark, as used by the Complainant, is recognized and relied upon by medical professionals and the public throughout the United States and the world as the sole means to identify and distinguish the Complainant and the Complainant's goods and services from the goods and services of others." Hence, the Complainant contends that the Respondent, "recognizing the value of the Internet to the Complainant in augmenting the Complainant's ability to communicate with its customers and potential customers, registered the domain name <phiser.com> with the bad faith intent to profit from such registration, and blatantly used the term 'phiser' which looks and sounds virtually identical to the Complainant's PFIZER trademark, to do so".

In particular, the Complainant contends that the Respondent's bad faith registration is exemplified by the following:

- (i) the Complainant's mark is a mark that has a strong reputation in the United States and around the world;
- (ii) although the Respondent was clearly aware of the mark "PFIZER", the Respondent deliberately registered a domain name with only a minor spelling variant, known as typosquatting, to the well-known mark "PFIZER" in order to confuse consumers and to profit from such confusion;
- (iii) the Respondent was clearly aware of the mark "PFIZER" prior to the registration of <phiser.com>, as is evidenced by the worldwide fame of the mark "PFIZER";
- (iv) <phiser.com> was intended to be and is substantially and confusingly similar to the Complainant's mark "PFIZER";
- (v) the Respondent's deliberate use of a common typo, i.e., the substitution of the letters "h" and "s" for the "f" and "z" in the mark "PFIZER," while maintaining an identical pronunciation, indicates that the Respondent knew or should have known of the Complainant's registration and use of that

mark prior to registering the domain name;

- (vi) <phiser.com> is substantially similar to the Complainant's corporate name, which is commonly used to identify the Complainant as a company as well as a wide variety of pharmaceutical, consumer and animal health care products, and is confusingly similar to the domain name for the Complainant's own web site, i.e., <pfizer.com>;
- (vii) the Respondent's inclusion of the phrase "THIS DOMAIN FOR SALE - EMAIL" throughout the Respondent's WHOIS information indicates that the domain name was registered with an abusive, bad faith intent; and
- (viii) the Respondent's inclusion of the phrase "THIS DOMAIN FOR SALE - EMAIL," together with the fact that the Respondent provided the Registrar with incomplete and false contact information, such as a non-working telephone number and no street address or post office box, indicates bad faith registration.

As to bad faith use, the Complainant takes the position that bad faith use of the contested domain name is determined, not by whether the Respondent is making a positive action in bad faith, but instead by whether all of the other circumstances of the case indicate bad faith by the Respondent. In that regard, the Complainant contends that bad faith use is exemplified by the following factors:

- (i) the mark "PFIZER" is a famous mark that generates worldwide recognition and attention by consumers and professionals alike;
- (ii) the Respondent intentionally used a common typo to the mark "PFIZER", exchanging the "f" and "z" for an "h" and "s", in order to confuse and divert customers from the Complainant's web sites;
- (iii) the pronunciation of the term "Phiser" and the mark "PFIZER" are identical;
- (iv) the Respondent seeks to profit from this illegitimate use;
- (v) <phiser.com> is deliberately, misleadingly and confusingly similar to the Complainant's registered mark "PFIZER", which is legitimately used to identify the Complainant as the sole source of the drugs and to distinguish the Complainant's goods and services from the goods and services of others;
- (vi) the Respondent has no rights or legitimate interest in the use of <phiser.com>, and
- (viii) the Respondent provided incomplete registration information to the Registrar.

Because the Respondent provided incomplete registration information to the Registrar and included a direct offer to sell the domain name, the Complainant infers that the contested domain name was registered for the illegitimate purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, or its competitor, for valuable consideration in excess of the domain name registrant's out-of-pocket costs directly related to the domain name. In that regard, the

Complainant notes that the Respondent did not provide a street address or post office box and the telephone number which was provided is a non-working number.

Moreover, the Complainant points to inclusion throughout the Respondent's WHOIS registration record of the phrase "THIS DOMAIN FOR SALE – EMAIL". The Complainant takes the position that such a phrase indicates that the Respondent intended to sell the domain name starting from the date of its registration; which is itself an illegitimate use. Currently, the domain name is being used to forward or redirect Internet consumers, who are likely looking for the Complainant's web site, to the <sunfinder.com> site for a fee - which the Complainant also views as an illegitimate use. Given this, the Complainant infers that the Respondent has not made nor intends to make any preparatory steps to use the contested domain name in a legitimate commercial or fair use context.

In view of the Respondent's intent to sell the domain name, the Complainant contends that the Respondent's actions clearly evince that the Respondent registered and is using the domain name in bad faith.

Additionally, by using the contested domain name <phiser.com>, the Complainant contends that the Respondent has intentionally attempted to attract for financial gain Internet users to the Respondent's web site by creating a likelihood of confusion with the Complainant's mark "PFIZER" as to the source, sponsorship, affiliation or endorsement of the Respondent's site. In that regard, the Complainant contends that the Respondent's actions are intentional, willful and in bad faith, and were committed with full knowledge of the ownership by the Complainant of the mark "PFIZER" and the Complainant's exclusive rights to use and license such mark.

Specifically, the Complainant contends that the Respondent's use of the contested domain name which is confusingly similar to the mark "PFIZER" may prevent or hinder Internet users from accessing the Complainant's services on its own web site <pfizer.com> by confusing and/or frustrating prospective users. Once confused or frustrated, those users may stop searching for the Complainant's web site altogether. Once Internet users find themselves, not at the Complainant's site but, instead, at the <sunfinder.com> web site, those users may assume that the Complainant does not maintain a web site under its mark and may stop looking for such a site. Hence, the Complainant views that the Respondent's use of the contested domain name anticipates, relies on and profits from this consumer confusion or mistake.

Therefore, the Complainant concludes that the Respondent's conduct constitutes bad faith registration and use under paragraph 4(a)(iii) of the Policy.

B. Respondent

The Respondent has not filed any Response to the allegations raised in the Complaint.

6. Discussion and Findings

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed representations. In that regard and apart from judging this proceeding through mere default of the Respondent, the Panel makes the following specific findings.

i. Similarity

The Panel finds that confusion would unquestionably arise - and in fact is so intended as a result of the Respondent's current use of the contested domain name. Further, the Panel can conceive of no situation where confusion would not likely arise when and if any third-party not affiliated with the Complainant, to which the Respondent were to transfer the contested domain name, were to use that name with a web site offering goods identical and/or similar to those provided by the Complainant under its name and mark "PFIZER".

Further, merely substituting "f" and "z" in the mark "PFIZER" with "h" and "s", respectively, to yield the contested domain name, that is phonetically equivalent to the mark, are changes that are so de minimus that the only purpose which the Panel envisions behind the Respondent having done so is to cause and opportunistically exploit inevitable user confusion. There can be no question that this is the Respondent's goal. Otherwise, why would the Respondent have chosen a domain name that, given its slight alterations, remains phonetically equivalent to the Complainant's mark "PFIZER"?

Such confusion would undoubtedly cause Internet users intending to access the Complainant's web site, but who reach the Respondent's travel web site through the contested domain name, to think that an affiliation of some sort exists between the Complainant and the Respondent, when, in fact, no such relationship would exist at all. See, e.g., *Peter Frampton v. Frampton Enterprises, Inc.*, WIPO Case No. D2002-0141 (April 17, 2002); *MPL Communications, Limited and MPL Communications, Inc. v. LOVEARTH.net*, FA 97086 (Nat. Arb. Forum June 4, 2001); *MPL Communications, Limited et al v. IWebAddress.com*, FA 97092, (Nat. Arb. Forum June 4, 2001); *American Home Products Corp. v. Malgioglio*, WIPO Case No. D2000-1602 (February 19, 2001); *Surface Protection Indus., Inc. v. The Webposters*, WIPO Case No. D2000-1613 (February 5, 2001); *Dollar Financial Group, Inc. v. VQM NET*, FA 96101 (Nat. Arb. Forum January 25, 2001); *eBAY Inc. v. G L Liadis Computing, Ltd*, WIPO Case No. D2000-1463 (January 10, 2001); *Treeforms, Inc. v. Cayne Indus. Sales Corp.*, FA 95856 (Nat. Arb. Forum December 18, 2000); and *The Pep Boys Manny, Moe and Jack of California v. E-Commerce Today, Ltd.*, AF-0145 (eResolution May 3, 2000).

In view of the Complainant's substantial and widespread use over the past 70 years of its mark "PFIZER" in connection with its various products, that mark has clearly become so distinctive, acquired such secondary meaning and hence fame to the point where a significant proportion of the world's population is likely to recognize that mark as signifying a specific, unique, and widely recognized source of pharmaceutical and chemical compounds. It is utterly inconceivable that, given this recognition, the Respondent was completely unaware of it when it registered the contested domain name.

Therefore, the Panel finds that the contested domain name <phiser.com> sufficiently resembles the Complainant's mark "PFIZER" as to cause confusion; hence, the Complainant has shown sufficient similarity between its mark and the contested domain name under paragraph 4(a)(i) of the Policy.

ii. Illegitimacy

Certainly given its federal (let alone overseas) trademark registrations, the Complainant

has acquired exclusive rights to use its "Pfizer" Marks in conjunction with the goods which the Complainant has been providing under the mark "PFIZER" for more than seven decades. Furthermore, by virtue of having registered the mark "PFIZER", the US PTO has long ago recognized that this mark has acquired requisite secondary meaning in the marketplace.

The Panel believes that the Respondent has yet to provide any basis that would legitimize any claim it has to the contested domain name. In fact, it is extremely unlikely that the Respondent can even make such a claim.

The simple reason is that the contested domain name is phonetically equivalent with nearly identical spelling to the Complainant's mark "PFIZER" under which the Complainant provides its goods and has been doing so for approximately 70 years. Furthermore, the Complainant has never authorized the Respondent to utilize the mark "PFIZER", or a mark confusingly similar thereto, in conjunction with the specific goods which the Complainant provides under that mark, nor does the Complainant have any relationship or association whatsoever with the Respondent.

Hence, any use to which the Respondent were to put the mark "PFIZER" or a mark confusingly similar thereto, in connection with the goods presently provided by the Complainant as well as those set forth in any of the Complainant's registrations would directly violate the exclusive trademark rights now residing in the Complainant. See, e.g., the *MPL Communications*, FA 97086 and FA 97092 decisions, cited *supra*; *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. D2000-1374 (December 11, 2000), and *Treeforms, Inc. v. Cayne Ind. Sales Corp.*, cited *supra*.

It is eminently clear to this Panel that the Respondent, in choosing a domain name that at its essence is phonetically identical and hence confusingly similar to the Complainant's mark "PFIZER", is intentionally seeking to opportunistically exploit user confusion by diverting, through re-direction and diversion, Internet users away from the Complainant's site to the Respondent's web site for the latter's own pecuniary benefit, i.e., increased traffic to its travel web site and correspondingly increased sales therethrough. The Respondent is doing so by simply relying on expected user misspelling of the Complainant's mark "PFIZER" to directly capitalize on the reputation and fame of that mark to the Complainant's ultimate detriment and the Respondent's financial gain.

Such parasitic use, which at its essence relies on instigating and exacerbating user confusion, can not and does not constitute bona fide commercial or fair use sufficient to legitimize any rights and interests the Respondent might have in the contested domain name. See *Peter Frampton v. Frampton Enterprises, Inc.*, cited *supra*.

In light of the above findings, the Panel is not persuaded that the Respondent has any or, based on current facts provided to the Panel, is likely to acquire any rights or legitimate interests in the contested domain name under any provision of paragraph 4(c) of the Policy.

Thus, the Panel finds that the Respondent has no rights or legitimate interests in the contested domain name within paragraph 4(a)(ii) of the Policy.

iii. Bad Faith

The Panel firmly believes that the Respondent's actions constitute bad faith registration and use of the contested domain name.

It is inconceivable to this Panel that, when the Respondent chose and registered the contested domain name in 2002, it had not been fully aware of the Complainant's mark "PFIZER" and particularly the widespread reputation which that mark had attained as a result of the Complainant's long-term and on-going marketing and other efforts in the pharmaceutical field now stretching some 70 years.

There can be no question that the Respondent, having absolutely no association, relationship or affiliation whatsoever with the Complainant, nevertheless chose a phonetically equivalent and commonly misspelled variant of the mark (the latter conduct generally being referred to as "typosquatting") as the contested domain name with a clear intent of creating a likelihood of user confusion by suggesting to Internet users that such an association, relationship or affiliation exists which in fact it clearly does not, and by doing so create opportunities, to commercially benefit itself, that would invariably arise out of that confusion. Current web site naming conventions are such that Internet users now expect to reach a desired third-party site by entering, as a web address for that site, a mark owned by or associated with the third-party. Hence, it is highly foreseeable for such a user, who does not know the exact spelling of the Complainant's mark "PFIZER" to inadvertently misspell it as "PHISER" and through doing so enter the contested domain name rather than that, <pfizer.com>, associated with the Complainant's web site. Having done so, the user is then re-directed and diverted to the Respondent's web site that has absolutely nothing to do with the Complainant.

Such users amount to additional traffic that the Respondent would not otherwise obtain which, in all likelihood, results in a measure of additional revenue to the Respondent through transactions which some of those users might engage in as a result of having been diverted to that site. If the Respondent did not intend to reap financial gain of some sort through registering the contested domain name knowing it was engaging in typosquatting, then what other reason could the Respondent have realistically had in doing so? The Panel infers, by the lack of a Response, that no such reason exists.

The Panel finds such opportunistic registration of the contested domain name, which is a phonetic equivalent of the Complainant's mark, as indicative of bad faith registration and the subsequent use of that domain name, as an agent for re-direction and diversion, by the Respondent in an effort to benefit itself as bad faith use, both collectively actionable under paragraph 4(b)(iv) of the Policy. See, e.g., *Peter Frampton v. Frampton Enterprises, Inc.*, cited *supra*; and *Novus Credit Services Inc. v. Personal*, WIPO Case No. D2000-1158 (November 29, 2000).

Furthermore, the Panel's finding of bad faith use and registration is buttressed by the fact that the Respondent not only provided the registrar with incorrect contact information but also, and blatantly revealing, explicitly specified, as part of its contact name: "THIS DOMAIN NAME IS FOR SALE-E-MAIL". To any WHOIS user that examines the corresponding registration record, such an entry leaves an unequivocal impression: the Respondent clearly intends to sell the contested domain name and is now actively soliciting offers for its sale -- offers that would clearly exceed the Respondent's cost of registration. It utterly defies belief to think that the Respondent would go to the effort of forming the contested domain name as a phonetic equivalent of the Complainant's mark "PFIZER" and then registering that name if all the Respondent sought to obtain was reimbursement of its direct costs of registration. Clearly, the Respondent, by effectively broadcasting its intent through encapsulating its solicitation message directly within the WHOIS entry for the contested domain name for all WHOIS readers to see, eagerly sought to obtain as much revenue as it possibly

could from selling that name.

In the Panel's mind, the Respondent's intentional act of entering such erroneous contact information constitutes bad faith registration. Moreover, the Respondent's intentional act in maintaining this information in the WHOIS entry and, by doing so, perpetuating, through the entry, the continual broadcast of this information to the Internet user community constitutes bad faith use.

Without question, this conduct directly contravenes paragraph 4(b)(i) of the Policy.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations to establish a prima facie case under paragraph 4(a) of the Policy upon which the relief it now seeks can be granted.

7. Decision

Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panel now grants the relief sought by the Complainant.

The contested domain name, specifically <phiser.com>, is ordered transferred to the Complainant.

Peter L. Michaelson, Esq.
Sole Panelist

Dated: July 3, 2002