Decision for dispute CAC-UDRP-101994

Case number	CAC-UDRP-101994
Time of filing	2018-05-21 11:48:47
Domain names	myidmpepsico.com, myidmmypepsico.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	PEPSICO, INC.

Complainant representative

Organization	RiskIQ, Inc. c/o Jonathan Matkowsky

Respondent

Organization	Compsys Domain Solutions Private Limited

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous "PEPSI" and "PEPSI"-variant trademarks worldwide. For example, “PEPSI” is registered since 1985 in the United States for a wide variety of goods and services from key chains to beach towels and clothing (U.S. Reg. No. 1,317,551). Other representative registrations include U.S. Reg. Nos. 824,150 and '151 for “PEPSI” and “PEPSI-COLA”, first used in 1898.

The disputed domain names were both registered in February 2018, i.e. the Complainant’s trademarks clearly predate the registration of the disputed domain names.

FACTUAL BACKGROUND

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

The Complainant PepsiCo, Inc., together with Its consolidated subsidiaries (collectively, "PepsiCo"), is a leading global food and beverage company with brands that are respected household names throughout the world. PepsiCo owns numerous valuable trademarks essential to its worldwide businesses, including the flagship “PEPSI” brand, one of the world's most recognized consumer brands, which has been used for soft drinks since 1911 as a shortened version of the “PEPSI-COLA"

mark that first denoted PepsiCo's soft drinks in 1898. PepsiCo relies on numerous domains comprised of the "PepsiCo," "Pepsi-Cola," and "Pepsi" strings, including <pepsi.com>, <pepsico.com>, <mypepsico.com>.

The string "idM" or "IDM" has a fairly well-understood meaning in the context of security and identity management. Identity management is generally a process of establishing confidence in user identities that are electronically presented to an information system as part of access (authorization) control, such as Single Sign-On (SSO) authentication processes.

The Complainant contends that both disputed domain names <myidmpepsico.com> and <myidmmypepsico.com> are probably algorithmically-generated typosquats based on traffic to PepsiCo's <idmt.mypepsico.com> domain name used by PepsiCo in connection with its identity management (idM).

The disputed domain names are being used for websites displaying sponsored listings related to PepsiCo, idM and PepsiCo's primary beverage competitor, the Coca-Cola Company. The Complainant contends that both disputed domain names were registered and are being used to exploit typographical errors and misdirect those seeking authorized access to PepsiCo's corporate website to commercial advertisements related to identity management, PepsiCo, and its competitor.

After initiating these dispute resolution proceedings, the Complainant’s representatives contacted the Respondent by e-mail, offering to terminate the proceedings if the Respondent transferred the disputed domain names. The Respondent replied to this e-mail and offered to transfer the disputed domain names against payment of (quote) “our out of pocket expenses of USD 145/- per domain”. The Complainant did not acept this offer.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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.

The Complainant has submitted an unsolicited supplemental filing describing the e-mail correspondence between its representative and the Respondent after the Complainant had initiated these dispute resolutions proceedings. While such supplemental filings are generally discouraged (unless specifically requested by the panel), the Panel has nevertheless decided to note its content, but found it irrelevant for the decision.

PRINCIPAL REASONS FOR THE DECISION

Apart from the descriptive additions “my” and “idm” the disputed domain names are identical to the Complainant’s established company name “PepsiCo”, which is again confusingly similar to the Complainant’s protected trademarks “PEPSI” and “PEPSI-COLA”. The disputed domain names are therefore confusingly similar to the Complainant’s well-known “PEPSI” and “PEPSI-COLA” trademarks (within the meaning of paragraph 4(a)(i) of the Policy).

The Panel also finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services, nor is the Respondent making a legitimate non-commercial or fair use of the disputed domain names, nor is the Respondent commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent. The Respondent's display of sponsored listings related to the Complainant, idM and the Complainant's primary beverage competitor is not a bona fide offering of goods and services within the meaning of paragraph 4(c)(i) of the Policy.

Given the Respondent's display of sponsored listings related to – among others – the Complainant it is evident that the Respondent had the Complainant and its trademarks in mind when registering the disputed domain names. In the absence of a Response, the Panel infers that by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, internet users to his website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of this website and the products advertised on it (within the meaning of 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. **MYIDMPEPSICO.COM**: Transferred
2. **MYIDMMYPEPSICO.COM**: Transferred

PANELLISTS

Name	**Dr. Thomas Schafft**

DATE OF PANEL DECISION 2018-06-23

Publish the Decision