Decision for dispute CAC-UDRP-101999

Case number	CAC-UDRP-101999
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Domain names	mypepsicoo.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	Pepsico, Inc.

Complainant representative

Organization	RiskIQ, Inc. c/o Jonathan Matkowsky

Respondent

Organization	Fundacion Comercio Electronico

IDENTIFICATION OF RIGHTS

PepsiCo owns numerous registrations for PEPSICO both in standard characters (e.g., Mexican Reg. 950496, in Class 32, Annex 5) as well as with design elements covering a wide variety of goods. Id. (e.g., see US Reg. No. 3026568; UK Reg. 992395; EUTM Reg. No. 013357637;).

FACTUAL BACKGROUND

PepsiCo, Inc. ("Complainant"), and 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 iconic and recognized consumer brands globally, 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. Each of the Pepsi, Diet Pepsi and Pepsi MAX products within the Pepsi portfolio generates more than $1 billion in annual retail sales. There are hundreds of "PepsiCo," "Pepsi-Cola," and "Pepsi" entities within PepsiCo supporting Complainant's business. PepsiCo relies on numerous domains comprised of the "PepsiCo," "Pepsi-Cola," and "Pepsi" strings, including <pepsi.com>, <pepsico.com>, <mypepsico.com> and many others.

Respondent is offering the disputed domain name for sale through Sedo for a minimum of $500. According to Domains By Proxy, the <owldomains@protonmail.com> account has been used to register another PEPSI-variant domain name in the past, <mypepsioc.com>

PARTIES CONTENTIONS

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).
A domain name which consists of an obvious misspelling of a trademark with no other meaning in context is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. E.g., see WIPO Overview 3.0 ¶ 1.9. The disputed domain name contains sufficiently recognizable aspects of the PEPSI and PEPSICO marks, which are highly distinctive and these characters have no other meaning in the context of the disputed domain name, or sufficient to avoid confusing similarity to the Pepsi and Pepsico marks. Therefore, the disputed domain name is confusingly similar to a mark in which PepsiCo has established rights under this element of the Policy.

Furthermore, Complainant operates a website for authenticating its authorized users with single sign-on (SSO) on the domain name <mypepsico.com> (PepsiCo's Login Page). The word 'my' combined with 'PepsiCo' conveys that Complainant's login page is in some way personalized for the user. The disputed domain name is a typosquat of PepsiCo's Login Page using character duplication, meaning the typo happens when the letter 'o' in PepsiCo's Login Page or the Pepsico name and mark is mistakenly typed twice. The practice of typosquatting has been consistently regarded as creating domain names confusingly similar to the relevant mark. E.g., CAC Case No. 100614 (internal citation omitted).

Apart from duplicating the letter 'o' in "PepsiCo" (or adding the misspelled generic corporate designation "co" as 'coo' to the Pepsi mark), the disputed domain name adds only the word "my," which is a common term in the English language, and particularly because PepsiCo uses the word "my" with its name and mark in a domain name for PepsiCo's Login Page, Internet users will, as far as the disputed domain name is concerned, understand this term as a specific reference to PepsiCo's LoginPage, or a more general reference to a PepsiCo website that is personalized in some way for the user.

The practice of typosquatting is designed to take advantage of Internet users' typographical errors, which means the typos must be confusingly similar by design. Neither appending 'my' and a misspelled corporate generic designation "co" as "coo" to the Pepsi mark, nor appending the word 'my' and the letter 'o' to the trade name and mark Pepsico, negates confusing similarity for purposes of assessing this element of the Policy.

For all the foregoing reasons, the disputed domain is confusingly similar to a mark in which PepsiCo has established rights.

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).
The disputed domain name is being used to divert Internet users to sponsored listings related to PepsiCo, employee-related services, and even PepsiCo's primary beverage competitor Coca-Cola Company. This hardly constitutes a legitimate interest regardless of whether the content or even string of characters in the disputed domain name was algorithmically generated; Respondent is still responsible for registering and using the disputed domain name with the content appearing on them. FIL Limited .v Elliott Evans, WIPO Case No. D 2014-0259 (“Panels have found that a domain name registrant will normally be deemed responsible for content appearing on a website at its domain name, even if such registrant may not be exercising direct control over such content—for example, in the case of advertising links appearing on an ‘automatically’ generated basis”); Oracle International Corporation v. Above.com Domain Privacy / Protection Domain, D2017-1987 (WIPO Dec. 26, 2017).

Furthermore, Respondent is offering the disputed domain name for sale through Sedo for a minimum of $500. Respondent has no legitimate interest in profiting from this typo of the PepsiCo Login Page.

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).

The mere registration of a domain name comprising typos or incorporating the mark plus a descriptive term to a famous or widely-known trademark by an unaffiliated entity creates a presumption of bad faith.

Particularly with respect to “automatically” generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name. Neither the fact that such links are generated by a third party, nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith.

The disputed domain name is likely to exploit typographical errors and misdirect those seeking authorized access to the PepsiCo Login Page to commercial advertisements related to PepsiCo, employee-related services or administration, and its competitor. Therefore, the disputed domain name operates by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website per UDRP paragraph 4(b). Given the fame of PEPSI, and the PEPSICO name and mark, it may be presumed that Respondent intended to commercially exploit the trademark significance given how this domain was put to use, including offering to sell it for a minimum of $500, and the fact it is a lookalike domain to the PepsiCo Login Page. Annex 8, PepsiCo, Inc. v. Alexandra Fard, D2011-1169 (WIPO Sept. 5, 2011) (transferring <summertimeispepsitime.com>) ("Given that the Complainant’s PEPSI marks are so well-known, the Respondent could only have registered or acquired the disputed domain name with an intent to capitalize on the valuable goodwill associated with the Complainant’s marks.")

Additional evidence of bad faith is that according to Domains By Proxy, the <owldomains@protonmail.com> account has been used to register another PEPSI-variant domain name in the past, <mypepsioc.com> . It is highly unlikely that the same <owldomains@protonmail.com> account belongs to two different organizations in different countries and phone numbers. Rather, it suggests that the Respondent is deliberately attempting to frustrate the real registrant's identity through multi-layered obfuscation.

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

The Respondent has registered and is using the famous trademark of the Compainant for offering the disputed domain name for sale.The mere registration of a domain name comprising typos or incorporating the mark plus a descriptive term to a famous or widely-known trademark by an unaffiliated entity creates a presumption of bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **MYPEPSICOO.COM**: Transferred

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2018-06-27

Publish the Decision