Decision for dispute CAC-UDRP-102136

Case number	CAC-UDRP-102136
Time of filing	2018-09-17 14:11:15
Domain names	PEPSICOFINANCELTD.ORG

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Pepsico, Inc.

Complainant representative

Organization	RiskIQ, Inc. c/o Jonathan Matkowsky

Respondent

Organization	Gtech Consults

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous “PEPSICO” trademarks, inter alia Mexican Reg. 9504968, US Reg. No. 3026568; UK Reg. 992395; EUTM Reg. No. 013357637. The Complainant is further the owner of numerous “PEPSI” and “PEPSI”-variant trademarks, inter alia U.S. Reg. No. 1,317,551 since 1985 or U.S. Reg. Nos. 824,150 and 824,151 for “PEPSI” and “PEPSI-COLA”, first used in 1898.

FACTUAL BACKGROUND

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

The Complainant including its consolidated subsidiaries is one of the leading global food and beverage company with brands that are respected household names throughout the world. The Complainant owns numerous valuable trademarks essential to its worldwide businesses, including PEPSI and PEPSICO. PEPSI and PEPSI-COLA have been found to be famous and well-known trademarks and there are over nine hundred active registrations for PEPSI-variant marks. There are hundreds of “PepsiCo”, “Pepsi-Cola” and “Pepsi” entities and numerous domains comprised of the “PepsiCo”, “Pepsi-Cola” and “Pepsi” strings.

The disputed domain name was registered on December 24, 2016 and can be seen as incorporating either the PEPSI trademark or the entirety of the PEPSICO mark, appending only generic terms “finance” and “ltd” and being identical or confusingly similar to Complainants trademarks. Furthermore, the disputed domain name incorporates the entirety of the distinguishing formative “PepsiCo” from Complainant’s well-known trade names. Adding “Finance” and the corporate designation “Ltd” does nothing to distinguish the disputed domain name from the names and marks in which Complainant has established rights, since PEPSI, PEPSI-COLA and PEPSICO are associated in the public mind with Complainant’s business.

Respondent is not licensed or otherwise authorized to use Complainant´s mark in any way, and Complainant has not given Respondent permission to use its mark in the disputed domain name. Respondent is not commonly known by the disputed domain name to have demonstrated that it has rights to or legitimate interests.

The site on the disputed domain name could not be reached and the disputed domain name, accordingly, does not constitute a bona fide offering of goods and services or a legitimate noncommercial fair use. Furthermore, within the first year after the creation of the disputed domain name as of at least October 18,2017, the disputed domain name was being used to host a site falsely holding itself out belonging to “Pepsico Finance ltd” as a “professional set up” having “expert knowledge of Finance, Banking and Insurance with proven service Industry experience”. This is false information and supports that the site was being used to scam people. People were invited to enter their personal email addresses and names to be contacted or to email them. Furthermore, the site on the disputed domain name specifically advertised “Bank Guarantees”. The prime bank guarantee fraud involves a bogus investment scheme promising quick riches in a short space of time by buying bank guarantees from 'prime' banks. Fraudsters invite users to join a scheme that they claim will make them rich quickly through bank guarantees. They promise to buy the bank guarantees at a discount and sell them shortly afterwards at an enormous premium. Once they part with their money, it disappears - along with the investment company. The fraudsters tell people that they’ll be part of a group of extremely rich investors. The fraudsters will try to make the scheme appear legal by giving victims documents that appear complex, sophisticated and official. They may falsely tell that all funds will be secured by a letter of credit, a bank-endorsed guarantee or another guaranteed certificate supported by the world’s major banks.

As there is no such “Pepsico Finance Ltd” entity, it is reasonable to conclude that the bank guarantee offering on the site was a bank guarantee scam exploiting the trademark significance of Complainant's name and mark to deceive users into thinking that the scam was a bona fide offering associated or originating from Claimant/PepsiCo. Respondent has no legitimate interest in creating an association in visitors' minds with PepsiCo to add credibility to a prime bank guarantee fraud scheme. Panels have categorically held that the use of a domain name for illegal activity such as impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent.

The mere registration of a domain name incorporating the mark plus a descriptive term to a famous or widely known trademark by an unaffiliated entity creates a presumption of bad faith because it may be inferred that Respondent, at the time it registered the disputed domain name, knew of Complainant's exclusive rights in the famous and well-known PepsiCo names and marks. and thus Respondent registered it in bad faith. Respondent’s registration and use of the confusingly similar disputed domain name is Respondent’s attempt to intentionally attract, for commercial gain, Internet users to its website and is thus evidence of Respondent’s bad faith. 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. The fact the website does not resolve currently is immaterial.

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).

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).

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).

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

A. Domain Name is Identical or Confusingly Similar to a Trademark or Service Mark

The Complainant has established the fact that it has valid rights for the trademarks PEPSI and PEPSICO and rights for the Complainant's name "PepsiCo". The descriptive additions "Finance" and the corporate designation "Ltd" does nothing to distinguish the disputed domain name from the names and marks in which Complainant has established rights – well-known trademark PEPSI, PEPSICO and PEPSI-COLA - as these are associated in the public mind with Complainant's business (e.g., CAC Case Case No. 101994, transferring <myidmpepsico.com> and <myidmmypepsico.com>).

The Panel therefore considers the disputed domain name to be confusingly similar to the Complainant's trademarks PEPSI, PEPSICO and PEPSI-COLA which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established a prima facie case (not challenged by the Respondent) that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. There is no website on the disputed domain name and the disputed domain name, therefore, does not constitute a bona fide offering of goods and services or a legitimate noncommercial fair use. The Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the term "PEPSI" or its variations or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

Furthermore, the Complainant has established the fact, that the disputed domain name was being used to host a site referring to non-existent "Pepsico Finance Ltd" company in the past. It seems that the bank guarantee offering on the site was a bank guarantee scam exploiting the trademark significance of Complainant's name and mark to deceive users into thinking that the scam was a bona fide offering associated or originating from the Complainant to grab personal information and attract to visitors to participate within such scheme. Such use of the disputed domain name does not constitute the bona fide use and there is no legitimate interest in creating an association in visitors' minds with the Complainant to add credibility to a prime bank guarantee fraud scheme. Use of a domain name for illegal activity can never confer rights or legitimate interests on a Respondent.

The Panel therefore considers that the Respondent has no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Domain Name Registered and Used in Bad Faith

The disputed domain name was not resolving to an active website at the time of filing but was used to attract visitors to the Respondent's website to participate within the bank guarantee fraud scheme in the past. Therefore, the disputed domain name was operated by creating a likelihood of confusion with the Complainant's trademarks. The Respondent also

attempted to intentionally attract, for commercial gain (bank guarantee scam) internet users to its website. Furthermore, the disputed domain name incorporates the well-known Complainant’s name and marks plus a descriptive terms, while the Respondent, at the time it registered the disputed domain name, without doubt knew of Complainant's exclusive rights in this name and marks.

It is evident that the Respondent had the Complainant and its trademarks in mind when registering the disputed domain name. In the absence of a Respondent’s response, the Panel infers that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to its 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, irrespective of the fact that such “products” were fraudulent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PEPSICOFINANCELTD.ORG**: Transferred

PANELLISTS

Name	**JUDr. Petr Hostaš**

DATE OF PANEL DECISION 2018-10-16

Publish the Decision