Decision for dispute CAC-UDRP-102290

Case number	CAC-UDRP-102290
Time of filing	2019-02-22 09:03:55
Domain names	PEPSICOGDV.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

Name	Bill Williamson

OTHER LEGAL PROCEEDINGS

The Complainant had notified the Registrar of the disputed domain name that it appeared to have been registered for phishing purposes, maliciously. According to the Complainant, the Registrar did not respond to the abuse report or confirm that it would investigate the complaint per the ICANN requirements. As consequence, the Complainant has filed a complaint with ICANN Compliance against Registrar. Meanwhile, this case has been closed.

There are no other proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the record owner of numerous “PEPSICO” trademarks, e.g. a Mexican registration (No. 9504968), a US registration (No. 3026568), a UK registration (No. 992395), and a European Union registration (No. 013357637).

Further, the Complainant is the owner of numerous “PEPSI” and “PEPSI-Cola” trademarks, e.g. US registration No. 1, 317, 551, since 1985, or US registrations Nos. 824, 150 and 824, 151 for “PEPSI” and “PEPSI-COLA”, first used in 1898 and other registrations from the United Kingdom, European Union, and Canada.

FACTUAL BACKGROUND

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

The Complainant including its consolidated subsidiaries is a leading global food and beverage company with brands that are respected household names throughout the world. The Complainant owns numerous trademarks essential to its worldwide businesses, including the PEPSI brand, 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.

PEPSI and PEPSI-COLA have been found to be famous and well-known marks and there are over nine hundred active registrations for PEPSI-variant marks reflected in the WIPO Global Brand Database. 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 February 13, 2018 and can be seen as incorporating either the well-known PEPSI trademark or the entirety of the PEPSICO mark, appending only descriptive or generic acronym "gdv", and being identical or confusingly similar to the Complainant's trademarks.

Furthermore, the disputed domain name incorporates the entirety of the distinguishing formative "PepsiCo" from the Complainant's well-known trade names.

Adding the letters "gdv" does nothing to distinguish the disputed domain name from the names and marks in which the Complainant has established rights since PEPSI, PEPSI-COLA, and PEPSICO are associated in the public mind with the Complainant's business.

The Respondent is not licensed or otherwise authorized to use the disputed domain name in any way, and the Complainant has not given the Respondent permission to use its trade mark in a domain name. The Respondent is not commonly known by the disputed domain name.

The website linked with the disputed domain name could not be reached at the time the Complaint was submitted to the Provider and the disputed domain name, accordingly, does not constitute a bona fide offering of goods and services or a legitimate non-commercial fair use.

Furthermore, it appears based on the DNS records, that the disputed domain name is currently being used to host mail (MX) records. Specifically, the Complainant was notified that on or about January 28, 2019, a fraudulent email was sent to a third-party from the disputed domain name, specifically from <procurement@pepsicogdv.com> to a third-party requesting bulk pricing for materials impersonating or spoofing the Vice Chairman and Chief Scientific Officer for the Global Research and Development Global Division of the Complainant. So the Complainant establishes a prima facie case that the disputed domain name was registered for purposes of carrying out phishing attacks spoofing the Complainant’s identity to send fraudulent emails for financial gain. Such use is neither bona fide nor a legitimate noncommercial fair use.

The mere registration of a domain name incorporating the trade mark plus random letters or more likely, a descriptive abbreviation, creates a presumption of bad faith because it may be inferred that the Respondent, at the time it registered the disputed domain name, knew of the Complainant's exclusive rights in the well-known PepsiCo names and trade marks and thus the Respondent registered it in bad faith. The Respondent’s registration and use of the confusingly similar disputed domain name is the Respondent’s attempt to intentionally attract, for commercial gain, internet users to its website or other online location and is thus evidence of the Respondent’s bad faith.

The disputed domain name operates by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation or endorsement of the Respondent’s website. The fact the website does not resolve currently to an active website 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.

Particularly, although it does not seem to be clear that the Respondent has received the Complaint, sent by the CAC, the CAC has complied with Paragraph 2 of the Rules and at least the email to one of the Respondent's addresses was successfully relayed.

PRINCIPAL REASONS FOR THE DECISION

As the Respondent did not file an administratively compliant Response, pursuant to Paragraph 14(b) of the Rules, the Panel may draw such inferences therefrom as it considers appropriate. Thus, the Panel accepts the contentions of the Complainant as admitted by the Respondent.

A. The Disputed Domain Name is Identical or Confusingly Similar to a Trademark or Service Mark in which the PepsiCo has Rights within the Meaning of the Policy.

The Complainant has, to the satisfaction of the Panel, shown that it has valid rights for the trademarks PEPSI and PEPSICO and for the Complainant’s name “PepsiCo”. Adding the letters "gdv" does not help significantly to distinguish the disputed domain name from the names and marks in which the Complainant has established rights since PEPSI, PEPSI-COLA, and PEPSICO are well known and famous trademarks associated in the public mind with the Complainant's business. The top level domain “.com” is to be neglected in this respect.

The Panel therefore considers the disputed domain name as incorporating either the well-known PEPSI trademark or the entirety of the PEPSICO mark, appending only descriptive or generic acronym "gdv", and being confusingly similar to PEPSI, PEPSI-COLA, and PEPSICO marks in which the Complainant has established rights in accordance with paragraph 4(a)(i) of the Policy.

B. The Respondent Has No Rights or Legitimate Interests in Respect of the Disputed Domain Name Within the Meaning of the Policy.

The Complainant has established a prima facie case 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 use its trade marks in a domain name.

The pertinent WHOIS information of the Respondent does not resemble the domain name. Therefore, on this record, the Respondent is not commonly known by the disputed domain name to have demonstrated that it has rights to or legitimate

interests under Policy 4(c)(ii). As the website linked with the disputed domain name could not be reached, it does not constitute a bona fide offering of goods and services under Policy 4(c)(i) or a legitimate non-commercial fair use under Policy 4(c)(iii).

Furthermore, the Complainant has established the fact, that the disputed domain name was registered for purposes of carrying out phishing attacks spoofing the Complainant's identity to send fraudulent emails for financial gain. Such use of a domain name for illegal activity can never confer rights or legitimate interests on a Respondent.

Accordingly, the Panel holds that the Respondent has no rights or legitimate interest in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

C. The Disputed Domain Name has been Registered and is Being Used in Bad Faith within the Meaning of the Policy.

The Respondent's registration and use of the confusingly similar disputed domain name is the Respondent's attempt to intentionally attract, for commercial gain, internet users to its website or other online location and is thus evidence of the Respondent's bad faith pursuant to Policy 4(b)(iv).

Therefore, the disputed domain name was operated by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website or on-line location per Policy paragraph 4(b).

The Respondent also attempted to commercially exploit the trademark significance given the disputed domain name was used to lure victims into mistakenly believing that an email was being sent to them from someone on behalf of the Complainant when the email was actually fraudulent.

The fact the website does not resolve currently to an active website is immaterial as even a respondent's failure to make an active use of a domain name may satisfy the requirements of 4(a)(iii) of the Policy.

Here, the disputed domain name, which is actually configured to host mail records, and is also likely being used to send fraudulent emails for the Respondent's own commercial gain in receiving bulk orders pretending to be someone associated with the Complainant's business constitutes bad faith registration and use of the disputed domain name.

Finally, the likelihood is that the disputed domain name was registered with inaccurate or false Whois information as the address at the location in the Whois record does not exist on Google Maps. This is additional evidence of bad-faith registration and use.

For all of the foregoing reasons, 4(a)(iii) of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PEPSICOGDV.COM**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2019-03-29

Publish the Decision