Decision for dispute CAC-UDRP-102705

Case number	CAC-UDRP-102705
Time of filing	2019-10-14 16:00:46
Domain names	PentairEverPure.com

Case administrator

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

Complainant

Organization	Pentair Flow Services AG
Organization	Pentair Filtration Solutions, LLC

Complainant representative

Organization	HSS IPM GmbH

Respondent

Name	Huang Jialong

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Pentair Flow Services AG owns numerous trade mark registrations for PENTAIR including:

• US trade mark registration no.5003584, which was registered on 19 July 2016.
• EU IPO trade mark registration no.010829117, which was registered on 12 December 2012.
• People's Republic of China trade marks registration no.11517820 and registered on 21 August 2015; registration no.10871905 and registered on 14 November 2015; registration no.10871907 and registered on 28 August 2015; and registration no.11519174, which was registered on 21 August 2014.

Pentair Filtration Solutions, LLC owns numerous trade mark registrations for EVERPURE around the world including:

• US trade mark registration number 0522527, which was registered on 21 March 1950.
• EU IPO trade mark registration no.009481011, which was registered on 20 January 2012.

FACTUAL BACKGROUND

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

The Pentair's Group ("Pentair's Group") is a water treatment organization. The parent company is Pentair Plc. The Complainants, Pentair Flow Services AG and Pentair Filtration Solutions, LLC are subsidiaries of Pentair Plc.

The official global website of the Pentair's Group is www.pentair.com.

Pentair's Group operates under different brands including PENTAIR EVERPURE. Pentair Flow Services AG owns the well-known registered trade mark PENTAIR in numerous countries. Pentair Filtration Solutions, LLC owns numerous trade mark registrations around the world for EVERPURE. Many of these trade mark registrations predate the registration of the disputed domain name.

The disputed domain name was registered on 4 April 2019.

The Complainants sent the Respondent a cease and desist letter on 19 September 2019 and reminders on 25 and 27 September but received no response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainants have, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainants have rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainants have, 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 Complainants have, 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

Paragraph 4(a) of the Policy requires the Complainants to prove each of the following three elements:

(i) That the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainants have rights.
(ii) The Respondent has no rights or legitimate interests in the disputed domain name.
(iii) The disputed domain name has been registered and used in bad faith.

A. CONFUSINGLY SIMILAR

The disputed domain name incorporates the Complainants' registered trade marks PENTAIR and EVERPURE.

It is well recognised that the generic top level suffix ".com" does not add any distinctiveness and may be disregarded when considering whether a disputed domain name is confusingly similar to the Complainant's trade mark. (See WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.)

Ignoring the ".com" suffix, the disputed domain name is made up solely of the Complainants' trade marks PENTAIR and EVERPURE.

The Panel finds that the disputed domain name is confusingly similar to the Complainants' trade marks, PENTAIR and EVERPURE, and that the requirements of Paragraph 4(a)(i) of the Policy have been met.

B. NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

The Complainants assert that:

i. The Respondent is not authorised to use the Complainant's trade marks and is not commonly known by the disputed domain name. The WHOIS information "Huang Jialong" in the WHOIS record is the only evidence that relates Respondent to the disputed domain name.

ii. A Google search of the terms "PENTAIR" and "CHINA" as well as "EVERPURE" and "CHINA" returns results that point to Pentair's Group and its business activity. The Respondent could easily have performed a similar search before registering the disputed domain name and would have found that the trade marks are owned by Complainants.

iii. There is no evidence that Respondent has a history of using, or preparing to use, the disputed domain name in connection with a bona fide offering of goods and services and that the intention of is to take advantage of an association with the business of Complainants' group.

iv. There is no evidence that Respondent is known by the disputed domain name, or has used it any for any known legitimate or non-commercial use. An inactive use when combined with trade marks is not a legitimate use (See WIPO case No. D2016-0253 Aldi GmbH & Co. KG Aldi Store Limited v. Greg Saunderson).

v. Before sending the cease and desist letter, the disputed domain name was used to host a website showing adult content. After the first reminder was sent the website content was taken down and is not showing active content. Such use is not a bona fide offering of goods or services or a legitimate non-commercial or fair use under the Policy. (See FORUM Case 1859309 Mayo Foundation for Medical Education and Research vs houchang li.).

Having considered these submissions and the evidence submitted with the Complaint, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The burden of proof now shifts to the Respondent. The Respondent has not filed a Response nor disputed any of the Complainant's submissions. The Respondent is not commonly known by the disputed domain name, nor authorised to use the Complainants' trade marks. The Respondent has not responded to the cease and desist letter and has used the disputed domain name in connection with adult content. There is nothing to indicate that the Respondent has used the disputed domain name in connection with a bona fide offering of goods or services, or for a legitimate non-commercial use.

The Panel concludes that the Complainants have shown that the Respondent has no rights or legitimate interests in the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. REGISTERED AND BEING USED IN BAD FAITH

The Complainants assert that the disputed domain name was registered in bad faith and say:

i. The Complainants' PENTAIR and EVERPURE trade marks predate the registration of the disputed domain name.

ii. The Respondent has not been authorised by the Complainants to register the disputed domain name.

iii. It is inconceivable that the unique combination of the marks PENTAIR and EVERPURE in the disputed domain name is not a deliberate and calculated attempt to improperly benefit from the Complainants' rights.

The Complainants also assert that the disputed domain name is being used in bad faith and say:

i. The Complainants' trade marks are well-known and predate Respondent's registration of the disputed domain name.

ii. The Complainants' a cease and desist letter informed the Respondent that the unauthorised use of the trade marks in the disputed domain name violated their rights. Despite reminders, the Respondent has disregarded the cease and desist letter, which is relevant in a finding of bad faith. (See News Group Newspapers Limited and News Network Limited v. Momm Amed Ia, WIPO Case No. D2000-1623; Nike, Inc. v. Azumano Travel, WIPO Case No. D2000-1598; and America Online, Inc. v. Antonio R. Diaz, WIPO Case No. D2000-1460.)

iii. The disputed domain name was used to host a website with adult content. After the cease and desist letter was sent, the disputed domain name resolved to an active website, which may indicate bad faith use. (See WIPO Case No. D2000-0003 Telstra Corporation Limited v. Nuclear Marshmellows.).

The Respondent has not filed a Response nor disputed any of the Complainants' assertions. There appears no reason why the Respondent would register the disputed domain name, incorporating the Complainants' trade marks other than to create a likelihood of confusion with the Complainants' marks. The Respondent has used the disputed domain name in to host a website with adult content. The Respondent has ignored the cease and desist letter, and while the disputed domain name now has a passive use, in all the circumstances of this case this cannot be seen as a legitimate use.

The Panel finds that the Complainants have proved that the disputed domain name was registered and used in bad faith and that the requirement of paragraph 4(a)(iii) of the Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PENTAIREVERPURE.COM**: Transferred

PANELLISTS

Name	**Veronica Bailey**

DATE OF PANEL DECISION 2019-12-04

Publish the Decision