Decision for dispute CAC-UDRP-102750

Case number	CAC-UDRP-102750
Time of filing	2019-10-30 11:49:26
Domain names	pepsic0.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Pepsico, Inc.

Complainant representative

Organization	RiskIQ, Inc. c/o Jonathan Matkowsky

Respondent

Name	james green

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings of which the Panel is aware which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registrant of numerous currently valid PEPSI and PEPSICO trademarks in many countries, including United States registered trademark PEPSI, No. 1317551, registered on February 5, 1985; UK registered trademark PEPSI, No. 00000978461, registered on July 27, 1971; and UK figurative mark PEPSICO, No. 00000992395, registered on May 19, 1972.

FACTUAL BACKGROUND

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

The Complainant and its subsidiaries (collectively, "PepsiCo") is a leading global food and beverage company. PepsiCo owns the 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 also owns numerous registrations for PEPSICO both in standard characters (e.g., Mexican Reg. 950496, in Class 32) as well as with design elements covering a wide variety of goods.

The Respondent is not licensed or otherwise authorized to use PepsiCo's marks in any way, and PepsiCo has not given the

Respondent permission to use its mark in any domain name. The pertinent WHOIS contact information does not resemble the disputed domain name, which is being used as a resource for a business e-mail compromise (BEC) scam, a sophisticated form of social engineering fraud targeting businesses and individuals who perform legitimate transfer-of-funds requests.

The disputed domain name was registered on October 21, 2019. That same day the Respondent sent an email, using a custom email address on the disputed domain name impersonating PepsiCo, to one of PepsiCo's vendors, attaching a PEPSICO Electronic Payment Trading Partner Enrollment Form and instructing the vendor to fill it out and send it back with sensitive banking details under a purported PepsiCo vendor management updating process.

The disputed domain name is also being used to host content advertising NameCheap's commercial services and that the disputed domain name has been set up in the DNS.

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 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

In accordance with paragraph 4(a) of the Policy, to obtain transfer of the disputed domain name, the Complainant must prove the following three elements: (i) the Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in the disputed domain name; and (iii) the Respondent has registered the disputed domain name and is using it in bad faith.

Under paragraph 15(a) of the Rules, “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the Complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

Apart from the inconsequential gTLD ".com", which may be ignored, the disputed domain name <pepsic0.com> comprises a homograph of the Complainant's PEPSICO mark: instead of the letter "o" there appears the number "0". It is thus confusingly

similar to a mark in which the Complainant has rights.

The Panel finds that the PEPSICO mark is distinctive and widely known. The Complainant's assertions are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so.
In the circumstances of this case, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It may be inferred from the registration of the disputed domain name and from the email sent from it on the same day, that when the Respondent registered the disputed domain name, the Respondent was well aware of the Complainant's rights in the famous PEPSICO mark and intended to masquerade as the Complainant.

The disputed domain name has been used to create a likelihood of confusion with the Complainant's trademark as to the source of the Respondent's emails sent from the disputed domain name. The mail server which the Respondent configured in the disputed domain name's DNS records has been used in an attempt to receive sensitive banking information from the Complainant's vendors. Given the fame of the PEPSICO mark, the Panel concludes that the Respondent intended to exploit commercially its trademark significance in order to conduct fraudulent BEC operations targeting the Complainant's vendors.

The Panel finds that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PEPSIC0.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2019-12-09

Publish the Decision