Decision for dispute CAC-UDRP-102917

Case number	CAC-UDRP-102917
Time of filing	2020-02-17 12:46:29
Domain names	penttair.org

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Pentair Flow Service AG

Complainant representative

Organization	HSS IPM GmbH

Respondent

Name	Frank Dellaquila

OTHER LEGAL PROCEEDINGS

The Panel is not aware of pending or decided legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant proved to be the owner of the following trademarks:

i) PENTAIR (& LOGO) - US Reg. no. 50003584;

ii) PENTAIR (& LOGO) - Swiss Reg. no. 675144;

iii) PENTAIR (& LOGO) - EUTM Reg. no. 010829117.

The Complainant also submitted a list of its trademarks and domain names registered in its name.

FACTUAL BACKGROUND

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

i) ABOUT COMPLAINANT AND THE BRAND PENTAIR

The Pentair Group (“Pentair Group”) is a water treatment organization with its parent company Pentair plc incorporated in Ireland, and its main U.S. office located in Minneapolis, Minnesota. Pentair plc was founded in the US in 1966, with 65% of company's revenue coming from the US and Canada as of 2017.

From approximately 110 locations in 30 countries, the Pentair Group’s 10,000 employees are united in the unwavering belief that the future of water depends on Pentair’s Group. Pentair Group’s 2018 revenue was in excess of USD $3.0 billion.

Pentair Flow Services AG is the owner of the trademark PENTAIR registered in numerous countries, including U.S.A. (reg. no. 50003584), Switzerland (reg. no. 675144) and European Union (reg. no. 010829117).

The Complainant also owns, through an affiliated company, the domain names www.pentair.com (registered on 17.10.1996), www.penttair.net (registered on 25.12.2003), www.pentair.org (registered on 3.11.2010).

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

As regards the First element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to its prior trademark and domain name as the addition of the letter "T" in the middle of the domain name is not sufficient to exclude confusing similarity with PENTAIR.

The Complainant supports its allegations citing WIPO Overview 3.0., confirming that minor spelling variations do not prevent domain names from being confusingly similar to the Complainant's trademarks.

Finally, the Complainant contends that TLD are disregarded when assessing confusing similarity as they are considered as standard registration requirements.

As regards the Second element of the Policy, the Complainant claims that the Respondent has no rights nor legitimate interest in registering the disputed domain name. According to the Complainant there is no evidence that the Respondent is known by the disputed domain name nor that the Respondent is authorized to use the disputed domain name.

Furthermore as <penttair.org> is not used, the Complainant claims that there is no bona fide offering of goods and services nor legitimate noncommercial use for the purposes of the Policy.

As regards the Third element of the Policy, the Complainant contends that the disputed domain name is a misspelling of the PENTAIR trademark. This allegedly proves that the Respondent was aware of the Complainant rights on the PENTAIR trademark at the time of the registration of the disputed domain name. Further indexes of bad faith could be inferred by the non use of the disputed domain name and by fact that the there are several active MX records connected to the disputed domain name.

RESPONDENT:

No administrative response was 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

1. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Complainant has successfully proved to be the owner of the trademark PENTAIR and of domain names composed by the Pentair trademark.

The disputed domain name is composed by the element "pentair" with the addition of a letter "t" between "PENT" and "AIR"

Nonetheless, the Panel finds that the trademark “PENTAIR” is fully recognizable in the disputed domain name and that the addition of the letter "T" has no significant impact in the confusing similarity assessment.

According to a consolidated case law in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in it, the confusing similarity threshold is met.

Furthermore, the addition of “.org”, must be disregarded in view of its technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in the domain name. Once such a prima facie case is made, the respondent carries the burden of demonstrating its rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, the Panel finds that the Complainant’s submitted evidence and allegations are sufficient to establish a prima facie case of Respondent’s lack of rights and legitimate interests in the disputed domain name.

According to the information provided by the Complainant and not contested by the Respondent, Mr. Frank Dellaquila is not commonly known by the disputed domain name nor is he authorized to use the disputed domain name by the owner of the PENTAIR trademark.

Additionally, the disputed domain name links to an inactive page. The Panels finds that the lack of contents at the disputed domain name shows the absence of a bona fide offering of goods or services and the lack of a legitimate noncommercial/ fair use of the disputed domain name.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the Policy.

3. The disputed domain names have been registered and are being used in bad faith.

The Panel finds the following circumstances as material in order to establish the Respondent's bad faith in the registration of the disputed domain name:

(i) the disputed domain name was registered well after the Complainant acquired rights on the trademark "PENTAIR";

(ii) the disputed domain name is a clear and obvious misspelling of the Complainant's trademark (i.e. typosquatting). Previous panels found that typosquatting discloses an intention on the part of the respondent to confuse users seeking or expecting to find a website related to the Complainant;

(iii) currently, the disputed domain name is not used. It is consensus view among the UDRP panels, that non-use of a domain name does not prevent a finding of use in bad faith (WIPO Case No. 2000-0003). In this case, the Panel considers the following circumstances as relevant in order to determine the Respondent's use in bad faith of the disputed domain name:

(i) the high degree of distinctiveness and reputation of the Complainant's trademark which makes it very improbable that the disputed domain name could be used in good faith. In other words, in the absence of an explanation by the Respondent, it is hardly conceivable a use of <penttair.org> which could not interfere with the Complainant’s trademark rights on PENTAIR;

(ii) the Respondent had the chance to explain the reason of the registration/use of the disputed domain name before and within this administrative proceeding but failed to do so;

(iii) the Respondent shielded its contact details using a privacy protection service which combined with the other elements is a further index of use in bad faith.

All above considered the Panel finds the evidence submitted as sufficient to prove use and registration in bad faith of the disputed domain name for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PENTTAIR.ORG**: Transferred

PANELLISTS

Name	**Andrea Mascetti**

DATE OF PANEL DECISION 2020-04-01

Publish the Decision