Decision for dispute CAC-UDRP-103202

Case number	CAC-UDRP-103202
Time of filing	2020-07-30 09:22:14
Domain names	PAPSICO.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

Organization	36 karatt

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

According to the Complainant's undisputed allegations, there are over nine hundred active registrations for PEPSI-variant marks. This decision is based in particular on European Union Trademark "PEPSICO" (fig.) no. 013357637 registered on 13 March 2015 for goods in classes 16, 29, 30, 32, 35, 36, 41.

This trademark registration predates the registration of the disputed domain name which is 8 July 2020.

FACTUAL BACKGROUND

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

1. PEPSI is one of the world's most iconic and recognized consumer brands globally [FN3]. It 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. Last year, PepsiCo generated more than $67 billion in net revenue.

2. It results from the Registrar Verification that the date of registration of the disputed domain name by the current registrant was 8 July 2020.

3. Respondent set up and has configured mail servers (MX) records on the disputed domain name, so that e-mails sent to the disputed domain name can technically be received and will be sent to accounts controlled or managed by Respondent. Furthermore, within a day from when the disputed domain name was created on July 8, someone responded to Complainant with a requested bank issued document allegedly containing the necessary wiring instructions for a request to re-direct payment to a different account related to a legitimate loan transaction, but copied individuals associated with Complainant but sent to them "@papsico.com" instead of "@pepsico.com".

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

1.
The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark, paragraph 4(a)(i) of the Policy.

The dominating verbal element of Complainant’s registered trademark PEPSICO is basically included in the disputed domain name. It is the view of this Panel that the mere substitution of the "E" by an "A" does not avoid the confusing similarity between the disputed domain name and the Complainant’s trademark. This is an evident misspelling.

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, at section 1.9). This Panel shares this view since the distinctive trademark PEPSICO is clearly recognizable within the disputed domain name.

2.
In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

In particular, the Panel notes that there is no evidence in the record showing could lead the Panel to conclude that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy. In addition, it results from the undisputed evidence before the Panel that the disputed domain name is used for sending

fraudulent e-mails. UDRP panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent (see WIPO Overview 3.0 at section 2.13.1 with further references). In the case at hand, the Complainant submitted substantial evidence of such illegal activities by providing e-mail correspondence sent from an e-mail account under the disputed domain name. The Panel considers this evidence as sufficient to support the Complainant's credible claim of illegal Respondent´s activity.

3.
Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy. It is indeed satisfied that the disputed domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location, paragraph 4(b)(iv) of the Policy.

This Panel approves the approach taken by previous UDRP panels following which the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending e-mail, phishing, identity theft, or malware distribution. Many such cases involve the respondent's use of the domain name to send deceptive e-mails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers (see WIPO Overview 3.0 at section 3.4). As explained above, it results from the undisputed evidence submitted by the Complainant that the disputed domain name has been used for sending fraudulent e-mails in order to generate a payment to an overseas bank account. In addition, the use of the disputed domain name in such an illegal scheme additionally demonstrates that the Respondent knew of the Complainant, its business and marks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PAPSICO.COM**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2020-09-07

Publish the Decision