Decision for dispute CAC-UDRP-103441

Case number	CAC-UDRP-103441
Time of filing	2020-12-02 09:44:51
Domain names	pcc-group.org

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	PCC SE

Respondent

Name	Donald E Short

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

PCC SE ("the Complainant" or "PCC group") is the owner and registrant of the trademark "PCC" which is registered at the German Patent and Trade Mark Office (Deutsches Patent- und Markenamt) under the registry number 30576754.

This trademark has also been registered internationally with the international registry number IR895466.

The Complainant states that the trademark is used as a part of the name of almost all companies of the PCC group structure to ensure a high value of brand recognition, especially in the chemical and transport sector.

The disputed domain name <pcc-group.org> was registered on April 24, 2020.

FACTUAL BACKGROUND

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

The Complainant draws Panel attention to previous UDRP decision:

- CAC Case no. 102380 Pepsico, Inc. vs. Allen Othman, it is already sufficient for a use in bad faith, if email-addresses are generated "to send deceptive emails, 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.". If already a "generation of email-addresses" for such purpose is sufficient for use in bad faith, then the "real use of email-addresses" for such a purpose (which is even more than simply the generation) as described in our complaint, has to be considered even more use in bad faith.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

I. The disputed domain name is confusingly similar to the protected mark

According to the Complainant, the disputed domain name <pcc-group.org> is identical or at least confusingly similar to the "PCC" trademark.

The Complainant believes that an independent third party might not know that companies of the PCC group have the email "@pcc.eu" and therefore may think that an email from the domain <pcc-group.org> is an original email from a PCC group company.

II. The Respondent does not have any rights or legitimate interest in the disputed domain name

According to the Complainant, the Respondent is not using the disputed domain name for any kind of website for its own business.

The Complainant provides that there is no connection between the Respondent and the disputed domain name in any case. Instead, the Respondent uses the disputed domain name´s email address in bad faith by pretending to be part of the PCC group.

Finally, there is no evidence for a fair or bona fide use of the disputed domain name, neither for commercial nor non-commercial uses. The Complainant concludes that there is no evidence for a right or legitimate interest of the Respondent in respect of the disputed domain name.

III. The disputed domain name has been registered and is being used in bad faith

According to the Complainant, the Respondent uses the disputed domain name in bad faith and has made no bona fide use of the disputed domain name. Instead, the Respondent uses the disputed domain name for sending an unknown number of emails to third parties, pretending to offer them a job in the name of the PCC group while simultaneously using the postal address of certain PCC companies located at Brezg Dolny, Poland as a part of his email signature block.

Furthermore, the Complainant has also used the original PCC group description in the pretended job offer from the English version of the PCC product website, so an independent third party who looks on the real PCC group product website will have even more the impression that the Respondent is part of the PCC group.

RESPONDENT:

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

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the “Policy”) provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent’s domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

2. that respondent has no rights or legitimate interests in respect of the domain name; and

3. the domain name has been registered and is being used in bad faith.

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

The Complainant has provided evidence and proved to be the owner of a trademark "PCC". The disputed domain name <pcc-group.org> consists of the Complainant’s PCC trademark and the generic term “group”. Essentially, the Respondent has appropriated the trademark "PCC" by adding a hyphen and the term "group" to presumably lead consumers to believe that it is affiliated with the Complainant. Previous UDRP panels have found that the fact that a domain name wholly incorporates a complainant’s registered mark is sufficient to establish identity or confusing similarity for the purposes of the Policy (see, e.g., Oki Data Americas Inc. v ASD, Inc., WIPO Case No. D2001-0903).

Additionally, the disputed domain name not only fully incorporates the PCC trademark but also includes a purely generic top-level domain (“gTLD”) “org”. Previous UDRP panels have also held that the gTLD “.org” is not to be taken into account when assessing whether a domain name is identical or confusingly similar to a trademark. See e.g., Wiluna Holdings, LLC v. Edna Sherman, FA 1652781 (Forum Jan. 22, 2016). Moreover, the “use or absence of punctuation marks, such as hyphens, does not alter the fact that a name is identical to a mark.".

The disputed domain name <pcc-group.org> shows a clear visual, phonetic and conceptual resemblance to the Complainant’s PCC trademark, and could confuse Internet users into thinking that the disputed domain name is associated with the Complainant or its trademarks.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark "PCC".

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

Under the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the term “PCC” as part of its domain name. The Respondent has used the disputed domain name to impersonate the Complainant, with the intention to presumably

defrauding third parties. Several emails were sent as originating from the misleading disputed domain email address "<pcc-group.org>". In these emails, the Respondent pretended to offer jobs in the name of the PCC group. Previous UDRP panels have held that the use of a domain name for illegal activity, including impersonation and passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent.

The Respondent actively uses the disputed domain email address in bad faith by pretending to be part of the PCC group and thus creating an impression that it might be affiliated with the Complainant.

In a present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

3) The disputed domain name has been registered and is being used in bad faith

Previous UDRP panels have held that the use of a domain name for the purposes of, inter alia, phishing and identity theft, constitutes bad faith.

The Respondent cannot claim not to have had knowledge of the Complainant's PCC trademark at the time of the registration of the disputed domain name. The Respondent has used the disputed domain name to impersonate the Complainant by sending out job offers to third parties in the name of the PCC group. This further suggests that the Respondent's sole intention in registering the disputed domain name was to take unfair advantage of the Complainant's PCC trademark and reputation, and suggests registration and use in bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied the third element of the Policy, that is that the Respondent's registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PCC-GROUP.ORG**: Transferred

PANELLISTS

Name	**Mgr. Barbora Donathová, LL.M.**

DATE OF PANEL DECISION 2021-01-06

Publish the Decision