Decision for dispute CAC-UDRP-103670

Case number	CAC-UDRP-103670
Time of filing	2021-03-17 11:10:22
Domain names	PEPSICO-USA.COM

Case administrator

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

Complainant

Organization	PepsiCo, Inc.

Complainant representative

Organization	RiskIQ, Inc. - Incident Investigation and Intelligence (i3), Jonathan Matkowsky

Respondent

Organization	Pepsico inc

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant's "PEPSI", "PEPSICO" and "PEPSI-COLA" brands are famous and well-known marks. The first, PEPSI-COLA, dates back to 1898.

PepsiCo owns trademark registrations for PEPSICO in standard characters (e.g., Mexico No. 950496 in Nice Classification Class 32) but also with design elements covering a wide variety of goods, notably US No. 3026568 registered on 13 December 2005 in Classes 16, 18 and 25.

The Complainant holds numerous domain name registrations containing "PEPSICO" "PEPSI-COLA" and "PEPSI" strings, including <pepsi.com>, <pepsico.com>, <mypepsico.com> and <pepsico.net>.

The Respondent registered the disputed domain name on 3 March 2021.

FACTUAL BACKGROUND

FACTUAL BACKGROUND

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

The Complainant produces beverages, as well as foods, sold around the world under its famous "PEPSI" and related brands.

The Respondent registered the disputed domain name by incorporating the entirety of the Complainant's "PEPSICO" mark in its stem, adding only a hyphen and the abbreviation for the United States of America, "USA".

The Respondent did so without being licensed or otherwise authorized by the Complainant as trademark owner.

The Respondent cannot be commonly known by the disputed domain name. The Respondent instead illegitimately employed the Complainant's name and headquarters address when giving the Respondent's contact details upon registration.

The Respondent impersonated PepsiCo staff through e-mail use of the disputed domain name, as shown by a communication adduced in evidence in which a vendor alerted the Complainant of a corresponding phishing attempt. The phishing e-mail the vendor had received, and which was connected with purchasing, purported to be from a named PepsiCo executive.

The registration and use of the disputed domain name that is the subject of this proceeding is a repetition of prior conduct against the Complainant that has already been found to be fraudulently abusive in several other ADR proceedings.

The registrar concerned in this case, PDR, was also the registrar concerned in previous ADR proceedings. The Complainant has asked PDR to block new registrations employing the Complainant's identity. PDR has taken action to suspend use of a domain name but has not to date blocked any new registration.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The relevant standard of proof is the balance of probabilities..

The disputed domain name is confusingly similar to the Complainant's mark because it contains the entire distinctive and widely known PEPSICO mark, accompanied only by a hyphen and the abbreviation for the country where the Complainant is headquartered, the USA.

The Respondent has no rights or legitimate interests in the disputed domain name. It has instead masqueraded as PepsiCo.

The Respondent has in this case continued an existing pattern of bad-faith conduct consisting in registering look-alike

domains to the Complainant's and then using the domain names concerned to send spear-phishing e-mails to PepsiCo vendors so as to deceive them for fraudulent ends. This constitutes bad-faith registration and use.

For the foregoing reasons, the criteria set forth in Paragraph 4(a)(iii) of the Policy have been satisfied.

The Complainant invites the Panel to consider how further similar registrations in the name of PepsiCo might be prevented with respect to the same registrar as in this proceeding, noting that the Complainant does not use PDR for its own domain name registrations.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 that 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 Complainant requested the Panel to instruct CAC to redact the identity of the Respondent in the Decision to be published in this proceeding. It argued that its image would otherwise be tarnished.

The Panel declines to accede to this request; no tarnishing occurs through unmasking an imposter, something which is evident from the Parties' appellations in this proceeding's title.

The Panel is satisfied that all procedural requirements under the UDRP were met and that there is no other reason why it would be inappropriate to provide a Decision and to publish it in full.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that:

- The Respondent designed the disputed domain name to be confusingly similar to the Complainant's trademark;

- There is no question to be considered of the Respondent's rights and interests; the factual background shows that the Respondent can have none;

- Similarly, there exists irrefutable proof of bad faith registration and use in what is a continuation of a pattern of egregious

domain name abuse involving phishing.

The three cumulative criteria to be met under the Policy having been satisfied, the Panel therefore orders transfer of the disputed domain name to the Complainant.

The Panel notes that the evidence in this case is unambiguous and that it has hence been unnecessary to make a finding on the Complainant's contention as to the kind of evidential test to be employed.

The Panel finally remarks that this case follows a series of Decisions by previous Panels that involves the same Complainant and Respondent, the same abusive practice by the Respondent and the same determination against it under the UDRP as in this case. On the basis of PDR's registration agreement adduced in evidence in the present proceeding, the Panel further observes that the agreement:

- prohibits phishing; and

- references the power reserved by ICANN's Registry for this Top Level Domain, Verisign, to deny registration in order to stop or prevent violations of the agreement's terms and conditions.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PEPSICO-USA.COM**: Transferred

PANELLISTS

Name	**Kevin J. Madders**

DATE OF PANEL DECISION 2021-05-02

Publish the Decision