

Decision for dispute CAC-UDRP-103724

Case number	CAC-UDRP-103724
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Time of filing	2021-04-20 09:47:54
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Domain names	PEPSSICO.COM
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Case administrator

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

Organization	PepsiCo, Inc.
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Complainant representative

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

Name	Gna Jobs
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant and its consolidated subsidiaries (collectively, "PepsiCo") are enjoyed by consumers more than one billion times a day in more than 200 countries and territories around the world.

PepsiCo relies on numerous domains comprised of the "PepsiCo," "Pepsi-Cola," and "Pepsi" strings, including <pepsi.com>, <pepsico.com>, <mypepsico.com>, and many others. It is the registrant of <pepsico.com> since 1993.

There are over nine hundred active registrations for PEPSI-variant marks reflected in the WIPO Global Brand Database. For example, since 1985, in the United States, PEPSI has been registered for various goods and services, from key chains to beach towels and clothing for use since at least the 1970s. Other representative registrations include U.S. Reg. Nos. 824, 150 and '151 for PEPSI and PEPSI-COLA, first used in 1898.

Other registrations are from the United Kingdom, European Union, and Canada.

FACTUAL BACKGROUND

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

PEPSI is one of the world's most iconic and recognized consumer brands globally. 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. Indeed, PEPSI, PEPSICO, and PEPSI-COLA are famous and well-known marks. 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. There are hundreds of "PepsiCo," "Pepsi-Cola," and "Pepsi" entities within PepsiCo supporting Complainant's business.

The disputed domain name reproduces closely the PEPSI trademark, but it reproduces the PEPSICO trademark almost identically. Respondent only adds a supplemental "s" in the sign, which does not change the pronunciation but it only duplicates an already existing letter. The disputed domain name is confusingly similar to Respondent's trademarks and to its [<pepsico.com>] domain name. The requirement of Paragraph 4(a)(i) of the Policy is, therefore met.

Respondent is not licensed or otherwise authorized to use Complainant's name or mark in any way, and Complainant has not given Respondent permission to use its name or mark in the disputed domain name. Respondent cannot be commonly known by Complainant's well-known mark as supported by the registration contact details used to register the domain name by Respondent.

It may fairly be presumed that this domain name is part of a pattern by the same threat actors of registering look-alike domains with the PDR registrar to send fraudulent e-mails targeting PepsiCo vendors in an attempt to attack its supply chain for ill-gotten gain. Although the domain may be suspended during the proceeding, PepsiCo has no control over its management and as the true Respondent is apparently still able to continue to register domains with PDR, there is no way to ensure that the domain subject of this proceeding won't be activated again for fraud unless it is transferred to Complainant's corporate portfolio.

To succeed in its claim, Complainant must demonstrate that the three elements enumerated in 4(a) of the Policy have been satisfied, specifically: (i) the Domain is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) Respondent has no rights to or legitimate interests in respect of the Domain; and (iii) Respondent has registered and is using the Domain in bad faith. The relevant standard of proof is the "balance of probabilities".

[A] PepsiCo's Background and the PEPSI, PEPSICO, and PEPSI-COLA Marks

Products of PepsiCo, Inc. ("Complainant") and its consolidated subsidiaries (collectively, "PepsiCo") are enjoyed by consumers more than one billion times a day in more than 200 countries and territories around the world. Based on last year's report on 2019, PepsiCo generated more than \$67 billion in net revenue, driven by a complementary food and beverage portfolio that includes Pepsi-Cola. PepsiCo's product portfolio includes a wide range of enjoyable foods and beverages, including 23 brands, such as the flagship PEPSI brand, that generate more than \$1 billion each in estimated annual retail sales. Id.

PEPSI is one of the world's most iconic and recognized consumer brands globally. 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. Indeed, PEPSI, PEPSICO, and PEPSI-COLA are famous and well-known marks, which this Panel may confirm on its knowledge ex officio. 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 (Id., at 117-19). There are hundreds of "PepsiCo," "Pepsi-Cola," and "Pepsi" entities within PepsiCo supporting Complainant's business. PepsiCo relies on numerous domains comprised of the "PepsiCo," "Pepsi-Cola," and "Pepsi" strings, including <pepsi.com>, <pepsico.com>, <mypepsico.com>, and many others. It is the registrant of <pepsico.com> since 1993.

There are over nine hundred active registrations for PEPSI-variant marks reflected in the WIPO Global Brand Database. For example, since 1985, in the United States, PEPSI has been registered for various goods and services, from key chains to beach towels and clothing for use since at least the 1970s. Other representative registrations are U.S. Reg. Nos. 824,150 and '151 for PEPSI and PEPSI-COLA, first used in 1898. Other registrations from the United Kingdom, European Union, and Canada are made of record and summarised in the index of representative registrations.

PepsiCo has received widespread recognition from numerous firms. Some of its recent awards and honors are included on its website.

[B] The Domain is Identical and Confusingly Similar to a Mark in which the PepsiCo has Rights within the Meaning of Policy, 4(a)(i).

The Complainant provided excerpts from previous UDRP cases:

"Here, the mere addition of the letter "s" is considered as an evident misspelling and as a clear case of typosquatting."

"[T]he disputed domain name...reproduces closely the PEPSI trademark, but it reproduces the PEPSICO trademark almost identically." Id. "Respondent only adds a supplemental "s" in the sign, which does not change the pronunciation but it only duplicates an already existing letter...[T]he disputed domain name is confusingly similar to Respondent's trademarks and to its [<pepsico.com>] domain name..." The requirement of Paragraph 4(a)(i) of the Policy is, therefore, met.

[C] Respondent has no Rights or Legitimate Interests Within the Meaning of Policy, 4(a)(ii).

Respondent is not licensed or otherwise authorized to use Complainant's name or mark in any way, and Complainant has not given Respondent permission to use its name or mark in the Domain. Respondent cannot be commonly known by Complainant's well-known mark as supported by the registration contact details used to register the Domain by Respondent.

In several cases before the Czech Arbitration Court, such as in CAC Case No. 103277, 103278, 103393, and 103563, the registrants registered typosquats of PepsiCo's trademark with PDR Ltd. d/b/a PublicDomainRegistry.com and configured mail servers on them in an attempt to defraud PepsiCo's vendors through supply chain fraud and business e-mail compromise (BEC). In this case, there have not been any known attempts to defraud PepsiCo's suppliers, but given the similarity to other typosquat domain names registered with the same infrastructure recently (e.g., same name servers, mail servers, and registrar), RiskIQ (PepsiCo's authorized representative) contacted PDR prior to submission of the Complaint to request the domain name subject of this case be suspended without having to wait for Complainant's supplier to complain that the Respondent attempted or successfully defrauded them with the Domain. In this case, apart from the same infrastructure being used, the e-mail account used to register the Domain appears to relate to the nature of the suspected fraudulent activity--invoices for supply chain fraud "gracemoney.invoices@gmail.com". And on top of that, it is highly unlikely there is any natural person with the name "Gna Jobs" residing on Spintex Rd without any address number because Spintex Road is a general suburb of Accra, the capital of Ghana that according to Wikipedia, is over 87sq mi with an estimated urban population of more than 4 million people as of 2020.

Complainant's prima facie case is successful unless Respondent attempts to show that it benefits from any legitimate interests or rights in the PEPSICO sign, or any similar sign, which it cannot do. Respondent's failure to respond to Complainant's contentions would commonly be considered as evidence that Respondent has no right or legitimate interests in the disputed domain name. Id. The requirement of Paragraph 4(a)(ii) of the Policy is, therefore, met.

[D] The Domain has been Registered and is Being Used in Bad Faith within the Policy Meaning.

The Complainant provided excerpts from previous UDRP cases:

"Firstly, Complainant has duly shown its reputation, its rights in the PEPSI and PEPSICO trademarks, and its presence around the world. The structure of the disputed domain name allows the Panel to consider that Respondent had Complainant's business in mind at the time it registered the disputed domain name." Therefore, Respondent tried to benefit from Complainant's reputation.

"The fact the website does not resolve currently to an active website is immaterial as even a respondent's failure to make an active use of a domain name may satisfy the requirements of paragraph 4(a)(iii) ..."

Especially without any rebuttal evidence, it may fairly be presumed that the disputed domain name is part of a pattern by the same threat actors of registering look-alike domains with the PDR registrar to send fraudulent e-mails targeting PepsiCo vendors in an attempt to attack its supply chain for ill-gotten gain. Although the disputed domain name may be suspended during the proceeding, PepsiCo has no control over its management and as the true Respondent is apparently still able to continue to register domains with PDR, there is no way to ensure that the disputed domain name won't be activated again for fraud unless it is transferred to Complainant's corporate portfolio.

Evidence the disputed domain name was configured to receive e-mails masquerading as PepsiCo is also included in annexes, where the following mails servers are active in the DNS:

ANSWER SECTION:

- PEPSSICO.COM. 38400 IN MX 100 us2.mx1.mailhostbox.COM;
- PEPSSICO.COM. 38400 IN MX 100 us2.mx2.mailhostbox.COM;
- PEPSSICO.COM. 38400 IN MX 100 us2.mx3.mailhostbox.COM;

Panels have found that the mere registration of a domain name incorporating a typo of PEPSICO, a famous and widely-known trademark by an unaffiliated entity creates a presumption of bad faith because it may be inferred that the Respondent, at the time it registered the domain name, knew of Complainant's exclusive rights in the famous and well-known PepsiCo names and marks, and that such use evidences an attempt to intentionally attract, for commercial gain, Internet users to its website or other on-line location under paragraph 4(b)(iv); and that it creates a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the Respondent's website or on-line location per the Policy; and that given the fame of the name and marks, it may be presumed that the Respondent intended to commercially exploit the trademark significance to set up mail (MX) records specifically to enable custom e-mail accounts on the disputed domain name that would inevitably result in misdirected communications to the Respondent intended for the Complainant, and/or e-mails that confuse recipients into thinking they were sent from an e-mail account that is under the Complainant's management and control.

Panels have noted that even without evidence that the custom e-mail accounts have already been deployed in attempted BEC fraud, as is the case here, merely configuring mail servers on a domain name evidence that the domain name is being used for the generation of custom e-mail accounts, and that bad faith regarding the use of a domain name can be found in relation to uses other than websites, such as where a Respondent uses a domain name to send deceptive e-mails, such as BEC, including soliciting payment, including from Complainant's vendors.

For all of the foregoing reasons, 4(a)(iii) of the Policy has been satisfied.

PARTIES CONTENTIONS

PARTIES CONTENTIONS: COMPLAINANT

COMPLAINANT

Complainants contends that the disputed domain name is essentially a typosquatting of one the world's most famous trademark, deprived of any fair/legitimate use basis, and used for evident bad faith purposes as, before being passively used (such use not impeding the bad faith finding according to art 4(a)(iii) Rules), it has been allegedly used as part of a pattern by the same threat actors of registering look-alike domains with the PDR registrar to send fraudulent e-mails targeting PepsiCo vendors in an attempt to attack its supply chain for ill-gotten gain.

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 present case is a clear-cut case of cybesquatting, involving of the most iconic brand in the world.

With regards to the three prongs to be established under paragraph 4(a) of the Policy, the following circumstances have been clearly and conclusively demonstrated:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights: PEPSSICO.COM is, in itself, a clear typosquatting of the world-famous PEPSI / PEPSICO trademarks. The deliberate intent to misspell an iconic trademark is also a very strong indicia of bad faith, as it “signals an intention to confuse users seeking or expecting the complainant” (UDRP Jurisprudential Overview 3.0);

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name: a trivial case of typosquatting (as those involving iconic brand) is indeed much more than a “prima facie” showing of lack of legitimate interest, and indeed the Complainant was also able to demonstrate the earlier questionable use of the domain name;

(iii) The disputed domain name has been registered and is being used in bad faith: well-known character of PEPSICO is of such a nature that a blatant typosquatting is evidence of a bad faith intention. Moreover, this last circumstance has been demonstrated by the evidence showing that the disputed domain name has been used for the generation of custom e-mail accounts. Registration of domain name <PEPSSICO.COM> is a deliberate typosquatting of the PEPSICO trademark, enjoying strong trademark rights since a century, in a self-evident bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PEPSSICO.COM**: Transferred
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PANELLISTS

Name	Roberto Manno
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DATE OF PANEL DECISION 2021-06-10

