# Decision for dispute CAC-UDRP-102845

| | |
|---|---|
| Case number | CAC-UDRP-102845 |
| Time of filing | 2020-01-02 10:24:03 |
| Domain names | mypentairbenfits.com |

## Case administrator

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

## Complainant

| | |
|---|---|
| Organization | Pentair Flow Service AG |

## Complainant representative

| | |
|---|---|
| Organization | HSS IPM GmbH |

## Respondent

| | |
|---|---|
| Organization | Super Privacy Service LTD c/o Dynadot |

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of multiple registrations for the word mark PENTAIR and marks incorporating the word PENTAIR, including Chinese Trademark No. 11517820 registered on August 21, 2015, Chinese Trademark No. 11519174 registered on August 21, 2014, and European Trademark No. 010829117 registered on December 12, 2012.

FACTUAL BACKGROUND

The Pentair Group of companies is involved in the business of water treatment. The Complainant, Pentair Flow Services AG, is a subsidiary of Pentair Plc and part of the Pentair Group of companies. Pentair Plc was incorporated in Ireland, with its main US office located in Minneapolis, Minnesota. The Pentair Group has numerous subsidiaries around the world, hiring 10,000 employees in approximately 110 locations in 30 countries.

An affiliate of the Complainant, Pentair Inc, is the registrant for multiple domain names that include the word PENTAIR, including <pentair.com>, registered on October 17, 1996, <pentairbenefits.com>, registered on March 19, 2014, and <mypentairbenefits.com>, registered on June 14, 2019.

There are four disputed domain names in the present case:

- <mypentairbenfits.com> created on November 11, 2019;

- <pentairbenefit.com> created on December 14, 2019;

- <mypentairbenifits.com> created on November 11, 2019; and

- <mypentairbenefit.com> created on June 14, 2019.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant requests that the complaint be consolidated against multiple respondents as the disputed domain names are subject to common control and consolidation would be fair and equitable to all parties.

The Complainant also requests that the proceedings be held in English.

The Complainant contends that the disputed domain names are confusingly similar to the PENTAIR mark on the basis that the disputed domain names wholly incorporate the Complainant's PENTAIR mark in its entirety, and that the addition of the words "my", "benefit", intentional misspellings of the word "benefits", and the generic top-level domain ("gTLD") ".com" are insufficient to avoid the likelihood of confusion with the PENTAIR Marks.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain names. The Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the PENTAIR mark.

The Complainant further asserts that the disputed domain names have been registered and are being used in bad faith as the Respondent should have known of the PENTAIR mark at the time of registration of the disputed domain names. The Complainant also asserts that the disputed domain names are being used in bad faith as the disputed domain names resolve to webpages containing Pay-Per-Click links ("PPC links").

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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.

Procedural Issue: Consolidation of Complainant Against Multiple Respondents

Although the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP") and the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") do not expressly provide for the consolidation of multiple respondents in a single administrative proceeding, previous panels have held that panels have the authority to order the consolidation of multiple domain name disputes where the domain names or corresponding websites are (i) subject to common control, and (ii) the consolidation would be fair and equitable to all parties (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.11.2; Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons, WIPO Case No. D2010-0281; and Virgin Enterprises Limited v. LINYANXIAO aka lin yanxiao, WIPO Case No. D2016-2302).

For ease of reference in considering the possible consolidation question, the Panel has numbered the disputed domain names as follows:

1. <mypentairbenfits.com> created on November 11, 2019, with the registrar Dynadot LLC and by the registrant named "Super Privacy Service LTD c/o Dynadot";

2. <pentairbenefit.com> created on December 14, 2019, with the registrar West263 International Ltd by the registrant named "Cun Shuo Zhang";

3. <mypentairbenifits.com> created on November 11, 2019, with the registrar Cloud Yuqu LLC by the registrant named "Super Privacy Service LTD c/o Dynadot"; and

4. <mypentairbenefit.com> created on June 14, 2019, with the registrar NameSilo LLC and by the registrant named "shi lei".

The Panel notes the following similarities between the disputed domain names:

- All 4 disputed domain names use the PENTAIR mark and have a similar pattern of including either the word "benefit", or misspellings of the word "benefits";

- All 4 disputed domain names resolve to webpages containing PPC links;

- Disputed domain names 1 and 3 were registered on the same day using the same privacy service, although the registrars are different;

- Disputed domain names 2, 3 and 4 share a common IP address;

- Disputed domain names 2 and 3 share a common registrant city and state;

- Disputed domain names 1, 2 and 3 share a common DNS during registration; and

- Disputed domain names 2, 3 and 4 share common DNS as of December 23, 2019.

On the balance of probabilities, the Panel is of the view that the Complainant has demonstrated that the disputed domain names are subject to common ownership or control. Given the fact that the Respondents did not respond to the Complaint or challenge the Complainant's evidence, the Panel finds evidence of such common control to be appropriate to justify the consolidation of the Complainant's claims against the registrants of the disputed domain names in this proceeding.

The Panel concludes in the circumstances of this case that consolidation would be fair and equitable to all parties, and procedurally efficient. The Panel, therefore, will allow the consolidation as requested by the Complainant pursuant to paragraph 10(e) of the Rules and the Panel shall thus refer to the Respondents as the Respondent.

Procedural Issue: Language of Proceedings

Paragraph 11 of the Rules provides that:

"(a) Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding."

The language of the Registration Agreements for the disputed domain names <pentairbenefit.com> and <mypentairbenifits.com> is Chinese, while the language of the Registration Agreements for the disputed domain names <mypentairbenfits.com> and <mypentairbenefit.com> is English. The Complainant requested that the language of the proceeding be English. The Respondent did not respond to the Complainant's language request.

The Panel cites the following with approval: "Thus, the general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case." (Groupe Auchan v. xmxzl, WIPO Case No. DCC2006-0004).

The Panel finds that in the present case, the following should be taken into consideration upon deciding on the language of the proceeding:

(i) All four disputed domain names consist of Latin letters, rather than Chinese letters;

(ii) All four disputed domain names contain English words, including the words "my", "benefit" and misspellings of the word "benefits";

(iii) The disputed domain names <pentairbenefit.com>, <mypentairbenefit.com> and <mypentairbenifits.com>, resolve to websites displaying PPC links in English;

(iv) The Complainant has no knowledge of Chinese, and in the present case, the use of a language other than English would impose a significant burden on the Complainant in view of the facts in question;

(v) The case involves the consolidation of the disputed domain name into a single case where some of the registration agreements are in the English language; and

(vi) The Respondents did not object to the request that the language of the proceedings shall be English.

Upon considering the above, the Panel determines that English be the language of the proceeding.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly

similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark PENTAIR.

All four disputed domain names wholly incorporate the Complainant's PENTAIR mark.

The disputed domain name <mypentairbenfits.com> differs from the Complainant's PENTAIR trademark by the addition of the word "my", the term "benfits" which is a misspelling of the word "benefits", and the gTLD suffix ".com".

The disputed domain name <pentairbenefit.com> differs from the Complainant's PENTAIR trademark by the addition of the word "benefit" and the generic Top-Level Domain ("gTLD") suffix ".com".

The disputed domain name <mypentairbenifits.com> differs from the Complainant's PENTAIR trademark by the addition of the word "my", the term "benifits" which is a misspelling of the word "benefits", and the gTLD suffix ".com".

The disputed domain name <mypentairbenefit.com> differs from the Complainant's PENTAIR trademark by the addition of the words "my" and "benefit" and the gTLD suffix ".com".

It is well-established where a complainant's trademark is recognizable within a domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity (see WIPO Overview 3.0, section 1.8; Novartis AG v. Radu Luca, WIPO Case No. D2016-2582). Thus, the addition of the words "my", "benefit" or misspellings of the word "benefits" do not avoid confusing similarity with the Complainant's PENTAIR mark.

It is also established that the addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see Accor v. Noldc Inc., WIPO Case No. D2005-0016; F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., WIPO Case No. D2006-0451; WIPO Overview 3.0, section 1.11). Thus, the addition of the gTLD ".com" is without significance and does not prevent a finding of confusing similarity in the present case.

In the particular circumstances of the present case, the Panel is of the view that the disputed domain names are identical or confusingly similar to the Complainant's trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the disputed domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns multiple trademarks incorporating the word PENTAIR before the disputed domain names were registered and that it has not licensed or otherwise permitted the Respondent to use the Complainant's PENTAIR mark (see LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master, WIPO Case No. D2010-0138).

In addition, the registrant names "Super Privacy Service LTD c/o Dynadot", "Cun Shuo Zhang" and "shi lei" bear no resemblance to the disputed domain names in any way (see Sportswear Company S.P.A. v. Tang Hong, WIPO Case No.

D2014-1875; WIPO Overview 3.0, section 2.3). Thus, there is no evidence that the Respondent is commonly known by the disputed domain names.

Furthermore, the Complainant has submitted evidence showing that the disputed domain names redirect to pages containing PPC links. Past panels have found that the use of a domain name to host a parking page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see Archer-Daniels-Midland Company v. Wang De Bing, WIPO Case No. D2017-0363; WIPO Overview 3.0, paragraph 2.9).

The disputed domain name <mypentairbenefit.com> resolves to a website comprising PPC links relating to water filters, which is the field of practice that the Complainant operates in. Therefore, the Panel finds that the use of the disputed domain name <mypentairbenefit.com> in the present case to host a parking page comprising PPC links does not represent a bona fide offering.

In the present case, the Respondent did not submit a response and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which is sufficient to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain names and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the disputed domain names were created after the PENTAIR mark was registered. Therefore, the prior registration of the PENTAIR mark is suggestive of the Respondent's bad faith when he registered the disputed domain names (see Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

The Complainant has further submitted evidence that an Internet search of the terms "PENTAIR" and "BENEFITS" would lead to results relating to the Complainant. This is suggestive that the Respondent knew or should have known that its registration would be identical or confusingly similar to the Complainant's PENTAIR mark (see WIPO Overview 3.0, paragraph 3.2.2).

Therefore, the Panel finds that the Respondent knew or should have known about the PENTAIR mark and finds it inconceivable that the Respondent could have acquired the disputed domain names without knowledge of the PENTAIR mark. (See Leite's Culinaria, Inc. v. Gary Cieara, WIPO Case No. D2014-0041; WIPO Overview 3.0, paragraph 3.2.2)

Furthermore, the disputed domain name <mypentairbenfits.com> is presently inactive and resolves to a blank page. Where passive holding is found, non-use of a domain name would not prevent a finding of bad faith, and a panel will look at the totality of circumstances in each case (see WIPO Overview 3.0, section 3.3; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). Examples of factors considered by previous UDRP panels include: "(i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and (iv) the implausibility of any good faith use to which the domain name may be put." In this case, the Panel is of the view that the particular circumstances strongly suggest that the Respondent's non-use of the disputed domain name <mypentairbenfits.com> is in bad faith. The Complainant's trademark is distinctive which shows bad faith on the Respondent's part as it specifically targeted the Complainant, the Respondent has failed to submit a response, the Respondent used a privacy service to hide its details, and it is implausible that there is any good faith use to which the disputed domain name may be put (see WIPO Overview 3.0, section 3.3;

Cloudflare, Inc. v. Private Registrant, Digital Privacy Corporation / Richard Sheng, WIPO Case No. DAI2019-0001; Philip Morris Products S.A. v. Han Ming, Lin Cheng, WIPO Case No. D2018-1635).

Next, the disputed domain names <pentairbenefit.com>, <mypentairbenefit.com> and <mypentairbenifits.com> resolve to websites comprising PPC links relating to, inter alia, water filters and employee insurance. The links relating to water filters are related to the industry that the Complainant operates in while the links relating to employee insurance suggests a connection to benefits received by the employees of the Complainant. Taken together with the confusing similarity between the disputed domain names and the Complainant's PENTAIR mark, this further indicates that the Respondent had intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark.

The Complainant has provided evidence of mail exchanger records ("MX records") attached to the disputed domain names, indicating that the disputed domain names can be used for email correspondence. The Panel agrees with the Complainant's assertion that e-mails sent from e-mail addresses containing the disputed domain names would likely confuse recipients into believing that it is a legitimate communication from the Complainant and thus constitutes evidence of bad faith use (see Facebook Inc. v. Jeremy Williams, 3 Man Group, WIPO Case No. D2019-1535).

Finally, The Respondent did not submit a Response in this proceeding. The Respondent also used a privacy shield to hide their identity and did not answer cease and desist letter to the merit of the case. These are all further indications of the Respondent's bad faith, which were considered by the Panel.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain names and the Complainant's mark, the fact that the disputed domain names directed to pages containing PPC links related to the industry that the Complainant is in, the fact that no Response was submitted by the Respondent, and the fact that the Respondent used a privacy shield, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MYPENTAIRBENFITS.COM**: Transferred
2. **PENTAIRBENEFIT.COM**: Transferred
3. **MYPENTAIRBENIFITS.COM**: Transferred
4. **MYPENTAIRBENEFIT.COM**: Transferred

## PANELLISTS

| | |
|---|---|
| Name | **Mr. Jonathan Agmon** |

DATE OF PANEL DECISION 2020-02-17

Publish the Decision