Decision for dispute CAC-UDRP-102915

Case number	CAC-UDRP-102915
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Domain names	PCPSICO.COM

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	PepsiCo, Inc.

Complainant representative

Organization	RiskIQ, Inc. c/o Jonathan Matkowsky

Respondent

Name	Andrew

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

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. PepsiCo generated more than $64 billion in net revenue in 2018, 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 22 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 - PepsiCo, Inc. v. Allen Othman, CAC Case No. 102380 (2019-04-23) "In light of the evidence presented by the Complainant, the Panel finds that the disputed domain name was registered and is being used in bad faith, including through its use in association with the configuration of email accounts (MX records)" and "Complainant's mark is very well known"). 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 and PEPSI-COLA are famous and well-known marks in CAC Case No. 101994, the Panel recognized “PEPSI” and “PEPSI-COLA” trademarks as well known, which was cited favorably in PepsiCo, Inc. v Gtech Consults, CAC Case No. 102136 (2018-10-16), where the

Panel found Complainant has established rights in "well-known trademark PEPSI, PEPSICO and PEPSI-COLA." 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.

There are over nine hundred active registrations for PEPSI-variant marks reflected in the WIPO Global Brand Database. For example, PEPSI has been registered since 1985 in the United States for a wide variety of 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, and other registrations from the United Kingdom, European Union, and Canada.

PepsiCo has received widespread recognition from numerous firms.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT

A domain name which consists of an obvious misspelling of a trademark with no other meaning in context is considered by panels to be confusingly similar to the relevant mark for purposes of the first element" cf. Pepsico, Inc. v. Fundacion Comercio Electronico, CAC Case No. 101999 (2018-06-27).

The Domain is an intentional misspelling of the PEPSICO mark, registered and being used so that customized emails sent or labeled as From an account on the Domain appear to be from a legitimate PepsiCo email account on the <pepsico.com> domain name. The Domain is confusingly similar because it contains the entire mark differing only by a close, intentional misspelling.

In this respect, it has been well established by numerous decisions that a domain name that consists of an intentional misspelling of a trademark is to be considered confusingly similar to the relevant trademark i.e. Capitol Federal Savings Bank v. Moniker Privacy Services / Charlie Kalopungi, WIPO Case No. D2011-0867: "The disputed domain name is identical with that mark but for substitution of the numeral zero for the letter "o" in CAPITOL. It is plainly confusingly similar to the Complainant's trademark."

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).

This is a case of "typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark. It is well established that the specific top level of a domain name such as “.com”, “.org” or in casu “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

Previous panels have found that the slight spelling variations does not prevent a domain name from being confusingly similar to the complainant’s trademark. Replacing the second letter “e” in “pepsico” with the visually very similar letter “c” does not take away the confusing similarity between the domain name and the trademark

Simple exchange or adding of letters is not a sufficient element to escape the finding that the disputed domain name is confusingly similar to the Complainant’s trademarks and domain names.

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use his trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark PEPSICO and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.
The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name does not currently resolve to an active website. In this case the Complainant has however evidenced that the disputed domain name enables the Respondent to send emails using an e-mail address that contains the disputed domain name.

From the examples presented to this Panel, it is clear that the Respondent uses the e-mails connected to the disputed domain name for fraudulent purposes and not for good faith use of the disputed domain name as part of an e-mail address. The Panel notes in this connection that passive holding of a domain name does not prevent a finding of bad faith use under 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 three essential issues under the paragraph 4(a) of the Policy are whether:

i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

ii. the Respondent has no rights or legitimate interests with respect to the disputed domain name; and

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

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered. There is no present use of the disputed domain name but there are evidence that the disputed domain name is used as part of e-mail addresses for fraudulent purposes. It is concluded that the Respondent makes bad faith use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PCPSICO.COM**: Transferred

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2020-03-29

Publish the Decision