Decision for dispute CAC-UDRP-105279

Case number	CAC-UDRP-105279
Time of filing	2023-03-10 10:45:57
Domain names	wwwpentairbenefits.com, pentairbenifits.com, pentairbenfits.com , wwwmypentairbenefits.com

Case administrator

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

Complainant

Organization	Pentair Flow Services AG

Complainant representative

Organization	HSS IPM GmbH

Respondent

Name	li jiang

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 a business within the Pentair Group of companies (“Pentair Group”). The Complainant is a leader in the water industry, composed of companies around the world, including Pentair Plc, Pentair Filtration Solutions LLC, Pentair Filtration, Inc., Pentair Inc., and the Complainant, among others.

The Complainant owns the following Trademarks:

- Chinese Trademark PENTAIR AND DESIGN, Reg. No. 11517821, IC 35, filed on September 20, 2012, registered on August 21, 2014 and in force until August 20, 2024;

- Chinese Trademark PENTAIR AND DESIGN, Reg. No. 3504734, IC 21, filed on March 28, 2003, registered on April 28, 2006, and in force until April 27, 2026;

- US Trademark PENTAIR, Reg. No. 2573714, IC 7, filed on April 28, 2000, registered on May 28, 2002, and in force until May 28, 2032; First Use in Commerce: January 4, 1999;

- US Trademark PENTAIR, Reg. No. 4348967, IC 7, IC 9, IC 11 and IC 20, filed on April 20, 2012, registered on June 11, 2013, and in force until June 12, 2023; First Use in Commerce: January 4, 1999 and September 1, 2000;

- EUIPO Trademark PENTAIR AND DESIGN, Reg. No. 011008414, IC 6, IC 7, IC 9, CI 11 and IC 42, filed on July 2, 2012, registered on

January 23, 2013, and in force until July 2, 2032.

- Swiss Trademark PENTAIR AND DESIGN, Reg. No. 675144, IC 6, IC 7, IC 9, IC 11, IC 17, IC 35, IC 36, IC 37, IC 40, IC 41 and IC 42, filed (beginning of term of protection) on October 26, 2012, and in force until October 26, 2032; and

- Canadian Trademark PENTAIR AND DESIGN, Reg. No. TMA1025371, IC 6, IC 7, IC 9, IC 11, IC 17, IC 35, IC 36, IC 37, IC 40, IC 41, IC 42 and IC 45, filed on October 23, 2012, registered on June 13, 2019, and in force until June 13, 2034.

FACTUAL BACKGROUND

The Complainant, is a business within the Pentair Group of companies ("Pentair Group"). The Complainant is a leader in the water industry, composed of companies around the world, including Pentair Plc, Pentair Filtration Solutions LLC, Pentair Filtration, Inc., Pentair Inc., and the Complainant, among others.

The Pentair Group, founded in 1966, has approximately 135 locations in 26 countries, with more than 11,000 employees; on 2022 its net sales were approximately of $4.1 billion.

The Complainant has multiple Trademark Registrations around the world, including in China, where the Respondent is located. The Complainant has online presence through the following domain names <pentair.com>, registered on October 17, 1996; <pentair.net>, registered on December 25, 2003; <pentair.org>, registered on November 3, 2010; and <pentairbenefits.com>, registered on March 19, 2014, owned by Pentair Inc. an affiliated Complainant's company.

The disputed domain names <**wwwpentairbenefits.com**> was registered on **October 28, 2022**; <**pentairbenifits.com**>, <**pentairbenfits.com**> and <**wwwmypentairbenefits.com**> (all these three) were registered on **October 27, 2022**. The disputed domain names resolve to a website with pay-per-click ("PPC") generic and commercial links, with potential malicious content.

PARTIES CONTENTIONS

Response

The Respondent did not submit any communication during the entire proceeding, nor has submit its Response replying to Complainant's contentions.

Complainant Contentions:

- The Complainant requests the Consolidation of the proceedings, based on the following factors: "(i) Three of the four disputed domain names, namely com, pentairbenifits.com and pentairbenfits.com were registered on the same day. The remaining disputed domain name, namely <wwwmypentairbenefits.com>, was registered just one day later; (ii) The disputed domain names contain similarly non-coincidental typo variants of the term "mypentairbenefits", a term which is incorporated in domain owned by the Pentair Group. Is inconceivable that the registration of variants of this term could be mere coincidence; (iii) The disputed domain names share the same IP location and the same or similar pay-per-click content; (iv) The disputed domain names com and pentairbenifits.com share the same IP address while pentairbenfits.com and wwwmypentairbenefits.com also share the same IP address; and (v) The disputed domain names were all registered by the same registrar: Cosmotown, Inc.".

- The Complainant contends that the disputed domain names are confusingly similar to Complainant's Trademark PENTAIR. That the four disputed domain names directly and entirely incorporate Complainant's Trademark PENTAIR along with typo variants of the relevant term "benefits." That the minor misspellings ("typosquatting") and the addition of dictionary or descriptive term to a complainant's mark are not material to a finding of confusing similarity, citing sections 1.8 and 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0").

- The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names, due to are not being used in connection with a bona fide offering of goods or services. That at the time of the preparation of the Complaint, the disputed domain names, depending on the browser, resolved to pay-per-click websites showing generic links or a browser warning alert regarding a malicious website, where such distribution has been confirmed as not a bona fide offering of goods or services, citing Wikimedia Foundation, Inc. v. Nanci Nette, Name Management Group, WIPO Case No. D2018-0717. The Complainant also contends that the use of typo variants of the term "benefit" was calculated by Respondent to take advantage of Pentair employees and prospective employees and other interested stakeholders who would be likely to undertake internet searches based on variants of the term "Pentair Benefits", citing Section 2.9 of the WIPO Jurisprudential Overview 3.0.

- The Complainant contends that the Respondent is not commonly known by the disputed domain names. That the Respondent could easily perform a similar search before registering the disputed domain names and would have quickly learnt that Complainant owns the Trademarks and about its extensive use. Also, that the Complainant has not authorized Respondent to use any of its Trademarks, and Complainant does not have any other relationship or association or connection with Respondent.

- The Complainant contends that it has not found any evidence that Respondent has made any known legitimate, non-commercial use of the disputed domain dames. The websites associated with the disputed domain names are not being used for the purposes of information or criticism or any other use that could potentially be deemed fair use.

- The Complainant contends that the disputed domain names were registered and are being used in bad faith, due to Complainant's business and Trademark reputation, that the incorporation of the Trademark PENTAIR and the term BENFENITS in the disputed domain names, with its corresponding typos and/or addition of generic terms, infers the Respondent's knowledge and bad faith targeting, citing Section 3.2.2 of the WIPO Jurisprudential Overview 3.0.

- The Complainant contends that the use of a domain name other than to host a website may constitute bad faith; that such purposes include sending email, phishing, or identity theft. The Complainant also pointed out that at least two of the disputed domain names had or have active MX records, meaning that e-mails could be sent from <pentairbenefits.com> variant e-mail addresses which would be likely to make a recipient believe that it was a legitimate communication from Complainant, or at least somehow connected to or endorsed by Complainant.

- The Complainant contends that Respondent's lack of response to its Cease-and-Desist Letter of March 2, 2023, emphasizes its bad faith. That the use of PPC's links with potential malicious content, means that Respondent took advantage of Complainant's Trademark by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's products, services, website or location. Also, that the Respondent intentionally chose the disputed domain names based on the widely registered and used Trademark PENTAIR, along with typo variants of the relevant term "benefits", in order to try to generate more traffic to its own business; that pursuant paragraph 4(b)(iv) of the Policy, the Respondent uses the disputed domain names to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant's Trademarks as to the source, sponsorship, affiliation or endorsement of its website.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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.

About the Consolidation Request

According to the evidence submitted, the Complaint has been filed by one single Complainant, entitled to the Trademark Rights, the disputed domain names were registered by the single revealed Respondent, therefore and Pursuant to paragraph 4(f) of the Policy and paragraph 10(e) of the Rules, this Panel grants Complainant's Consolidation Request.

PRINCIPAL REASONS FOR THE DECISION

Regarding the First UDRP Element, the Complainant has sufficiently proved before the Panel, that owns Trademark Rights over the term PENTAIR in multiple jurisdictions, including in China; with the earliest registration dating back to 2002.

This Panel will analyze each disputed domain name in turn.

The disputed domain name **<wwwpentairbenefits.com>** it is composed by the abbreviation of the term "World Wide Web", being

"www", plus the Trademark PENTAIR and the term "benefits". The disputed domain name <**pentairbenifits.com**> it is composed by the Trademark PENTAIR and the misspelled term "benefits", through the vowel "i" instead of an "e". The disputed domain name <**pentairbenfits.com**> it is composed by the Trademark PENTAIR and the misspelled term "benefits", through the elimination of the vowel "e". The disputed domain name <**wwwmypentairbenefits.com**>, it is composed by the abbreviation of the term "World Wide Web", being "www", plus the possessive adjective "my", the Trademark PENTAIR and the term "benefits".

In relation to the addition of terms, Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), has established that:

> "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Also, in relation to Typosquatting, Section 1.9 of the WIPO Jurisprudential Overview 3.0, has stated that:

> "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.
>
> This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant.
>
> **Examples of such typos include** (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (**v**i) **the addition** or interspersion **of other terms** or numbers." (emphasis added).

Despite the Complainant's Trademark PENTAIR has not been altered as such, the addition of misspelled terms, are perceived by this Panel, as acts of Typosquatting.

Regarding the gTLD, it is well established by the Domain Name Jurisprudence that for the purposes of the analysis of the First UDRP Element, in this case, the gTLD ".com", "is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test" (see Section 1.11.1 of the WIPO Jurisprudential Overview 3.0).

Therefore, the disputed domain names <**wwwpentairbenefits.com**>, <**pentairbenifits.com**>, <**pentairbenfits.com**> and <**wwwmypentairbenefits.com**>, are confusingly similar to Complainant's PENTAIR Trademark.

Regarding the Second UDRP Element, to this Panel has found that:

- No evidence suggests that the Respondent is commonly known by any of the disputed domain names; or that the Complainant ever granted the Respondent any authorization, license or right to make any use of Complainant's trademark PENTAIR, or to apply for registration of the disputed domain names; or that the Complainant has any affiliation or connection with the Respondent.
- That the Respondent is not making a bona fide offering of goods or services nor for a legitimate non-commercial or fair use of the disputed domain names, which are based on Complainant's Trademark PENTAIR goodwill and reputation, to resolve to a website with PPC generic commercial links with potential malicious content, with disastrous consequences for the Complainant and/or the Internet Users, and therefore it is not consistent with Respondent's rights or legitimate interests.

In relation to PPC's websites, Section 2.9 of the WIPO Jurisprudential Overview 3.0, states that:

> "Applying UDRP paragraph 4(c), panels have found **that the use of a domain name to host a parked 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**.
>
> (…) Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – **where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant's** (or its competitor's) trademark." (emphasis added).

The disputed domain names exactly reproduce Complainant's Trademark PENTAIR, plus misspelled variations of the term "Benefits", which it is intrinsically related to the Complainant, and generic terms, which in no way, to this Panel, it is perceived as a mere coincidence, in contrary, represents a sophisticated act of Cybersquatting. Furthermore, the disputed domain names resolve to a website with PPC generic and commercial links, with potential malicious content, with unlimited and disastrous consequences to the Internet Users, diverting consumers and, on top of that, tarnishing Complainant's PENTAIR Trademark.

Therefore, this Panel finds that Complainant has successfully made a prima facie case, which was not rebutted in any manner by

the Respondent, and concludes that the Respondent have no rights or legitimate interests in respect of the disputed domain names.

In relation to the Third UDRP Element, the Bad Faith, this Panel analyses the following:

Registration in Bad Faith:

The Complainant is a recognized company in water solutions, founded on 1966, with worldwide activity, which for the purposes of the UDRP, acquired its first Trademark Rights over the term PENTAIR at least since 1999 (US Trademark PENTAIR, Reg. No. 2573714, IC 7, filed on April 28, 2000, registered on May 28, 2002, and in force until May 28, 2032; First Use in Commerce: January 4, 1999), meaning that the Trademark PENTAIR has been in use, for more than 20 years in the market, providing more than sufficient time to the Respondent (located in China) to learn about the Complainant, since the disputed domain names were registered on October 27 and 28, 2022, based on a well-known Trademark to build a PPC website with generic and commercial links with potential malicious content.

The Complainant contends that given the reputation and extensive use of the Trademark PENTAIR the Respondent should have known about the Complainant at the time of the registration of the disputed domain names.

In relation to if the Respondent has engaged in a pattern of conduct due to the registration of the four disputed domain names, this Panel, pursuant paragraph 10(a) of the Rules, and according to the submitted evidence, finds that the Respondent "Li Jiang" has constituted a pattern of conduct in accordance to paragraph 4(b)(ii) of the Policy (see Section 3.1.2 of the WIPO Jurisprudential Overview 3.0; Sodexo v. Li Jiang, WIPO Case No. D2022-3852, Sodexo v. li jiang, WIPO Case No. D2023-0211, Carrefour SA v. li jiang, Case No. D2022-4621, Securian Financial Group, Inc. v. Li Jiang, FORUM Case Number: FA2211002020005, Payactiv, Inc. v. Li Jiang, FORUM Case Number: FA2102001931502).

As additional bad faith consideration factors, Section 3.2.1 of the WIPO Jurisprudential Overview 3.0 states:

> "Particular circumstances panels may take into account in assessing whether the respondent's registration of a domain name is in bad faith include: (i) **the nature of the domain name** (e.g., a typo of a widely-known mark, **or a domain name incorporating the complainant's mark plus an additional term such as a descriptive** or geographic term, **or one that corresponds to the complainant's area of activity** or natural zone of expansion), (…) (iii) **the content of any website to which the domain name directs**, including any changes in such content and the timing thereof, (iv) the timing and circumstances of the registration (…) (vi) **a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name**, or (viii) **other indicia generally suggesting that the respondent had somehow targeted the complainant**." (emphasis added).

Section 3.2.2 of the WIPO Jurisprudential Overview 3.0 states:

> "Noting the near instantaneous and global reach of the Internet and search engines, and **particularly in circumstances where the complainant's mark is widely known (including in its sector)** or highly specific and **a respondent cannot credibly claim to have been unaware of the mark** (particularly in the case of domainers)**, panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark**. **Further factors including the nature of the domain name**, the chosen top-level domain, **any use of the domain name**, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark." (emphasis added).

The fact that the disputed domain names substantially correspond to Complainant's Trademark and its business activity, the nature of the website, with potential malicious content, added to the potential use of e-mail addresses (active MX records) (see IPSOS v. Sam Morgan, WIPO Case No. D2023-0296; Compagnie de Saint-Gobain v. Contact Privacy Inc. Customer 7151571251 / Finizza, Heidi J., saint gobain, WIPO Case No. D2022-2422) with, as said, disastrous consequences towards Complainant's reputation and to the Internet Users, leaves no trace of doubt to this Panel, that the Respondent was fully aware of Complainant's Trademark at the time of the registration of the disputed domain names.

Therefore, this Panel concludes that the disputed domain names have been registered in bad faith.

Bad Faith Use

Given the nature of the disputed domain names and the PPC links, as described above, with potential malicious content, potential risk of distribution of any malicious content or data use, through the website or the active e-mails (e.g.: malware, phishing, and/or any other unlawful use), this Panel agrees with Complainant's contention, and finds that pursuant paragraph 4(b)(iv) of the Policy, the Respondent uses the disputed domain names to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant's Trademark as to the source, sponsorship, affiliation or endorsement of its website (see CW Brands LLC v. Carolina Rodrigues, Fundacion Comercio Electronico, WIPO Case No. D2023-0567; Udemy, Inc. v. (Dan Mao), WIPO Case No. DCO2023-0013 and WW International, Inc. v. Domain Admin / Whois Privacy Corp., WIPO Case No. D2020-3451).

Therefore, this Panel concludes that, the disputed domain names are being used in faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **wwwpentairbenefits.com**: Transferred
2. **pentairbenifits.com**: Transferred
3. **pentairbenfits.com** : Transferred
4. **wwwmypentairbenefits.com** : Transferred

PANELLISTS

Name	**María Alejandra López García**

DATE OF PANEL DECISION 2023-04-10

Publish the Decision