

Decision for dispute CAC-UDRP-105424

Case number	CAC-UDRP-105424
Time of filing	2023-05-09 09:46:59
Domain names	pentair333.com, pentair123.com, pentair001.com, pentair3.com, pentair33.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Pentair Flow Services AG
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Complainant representative

Organization	HSS IPM GmbH
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Respondent

Name	Chen Cheng
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is inter alia owner of US trademark registration no. 2573714 PENTAIR, filed on April 28, 2000, in class 7 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant is affiliated with the Pentair Group, an industry leader in the water sector, which was established in 1966. The group operates across 26 countries with a network of 135 locations and employs over 11,000 individuals. In 2022, the group achieved net sales totalling approximately \$4.1 billion. The Complainant provides information on its company online at www.pentair.com.

The disputed domain names were registered on February 27, 2023, and April 18, 2023, respectively. These domains have partly been utilized to host active websites that prominently feature the protected PENTAIR device logo and showcase various pictures of Pentair's products.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain names are confusingly similar to the Trademark. They argue that these domains incorporate the Trademark entirely, and the inclusion of numbers does not prevent a finding of confusing similarity under the first element.

Additionally, the Complainant argues that the Respondent lacks rights or legitimate interests in the disputed domain names. Specifically, they state that some of these domains have been used or are being used to operate an online shop that infringes on the PENTAIR Mark. The shop falsely offers a range of goods, including water purifier equipment associated with the Complainant. The Complainant maintains that such usage does not meet the bona fide criteria established in the case of *Oki Data Americas, Inc. v. ASD, Inc.* WIPO Case No. D2001-0903. They point out that the Respondent failed to disclose any relationship with the Complainant. Regarding the disputed domain name "pentair001.com," the Complainant argues that it is not being used for any legitimate offering of goods or services, as it remains inactive. The Complainant further asserts that the Respondent is not commonly known by the disputed domain names and is not using them in a non-commercial or fair manner without an intent for commercial gain.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith. They state that the PENTAIR trademark has a long-standing history predating the registration of the disputed domains. The PENTAIR Mark is registered in numerous territories, has been in use for several decades, and is widely recognized and distinctive. The Complainant argues that it is reasonable to infer that the Respondent knew or should have known about the PENTAIR Mark at the time of registration. Regarding bad faith use, the Complainant points out that the Respondent has used or is using four of the disputed domain names to attract Internet users to their website or online location for commercial gain. They achieve this by creating a likelihood of confusion with the Trademark regarding the source, sponsorship, affiliation, or endorsement of the Respondent's website or products/services. Regarding the unused disputed domain name "pentair001.com," the Complainant contends that it is implausible to conceive any legitimate or contemplated active use of the domain by the Respondent.

RESPONDENT:

No administratively compliant Response has been filed.

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.

PRINCIPAL REASONS FOR THE DECISION

1. Preliminary Issue: Consolidation of Respondents

Further to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.11.1, paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. At the same time, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the

domain names are registered by the same domain-name holder. When considering a complaint filed against multiple respondents, section 4.11.2 of the WIPO Overview 3.0 states that “panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario”.

In light of the Complainant's request to consolidate the multiple Respondents, the Panel concludes that the disputed domain names are indeed under common control for the following reasons:

- All the disputed domain names were registered within a span of only two days: February 27, 2023 ("pentair3.com" and "pentair33.com"), and April 18, 2023 ("pentair333.com", "pentair123.com", and "pentair001.com"). They were registered using the same privacy service and registrar.
- The disputed domain names share a similar pattern in their construction, with the addition of the numbers "3", "33", "333", "123", and "001" to the PENTAIR Mark.
- The domain names "pentair3.com" and "pentair33.com" on one side, and "pentair333.com" and "pentair123.com" on the other side, share the same IP address.
- The disputed domain names "pentair333.com", "pentair123.com", "pentair3.com", and "pentair33.com" display or used to display similar content featuring the protected PENTAIR device logo and product images from Pentair.

Furthermore, the Respondent has not contested or provided any rebuttal regarding the consolidation request made by the Complainant. Therefore, the Panel finds that consolidation would be fair and equitable, and henceforth refers to the four registrants collectively as the "Respondent" throughout this decision.

2. Substantive Issues

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain names are identical or confusingly similar to the Complainant's trademark; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

2.1 The Panel accepts that the disputed domain names are confusingly similar to the Trademark. It is well established that a domain name that wholly incorporates a trademark may be confusingly similar to such a trademark for purposes of the Policy despite the addition of numbers like the ones used in the present case.

2.2 The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain names. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain name.

Based on the evidence on file, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, the Panel finds that the Respondent's websites do not meet the Oki Data criteria as the Respondent, at least, has not disclosed its total lack of relationship or connection to the Complainant but rather prominently featured the Complainant's protected PENTAIR device logo, which gives the false impression that the pages were at least authorized by the Complainant. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.

2.3 The Panel is also satisfied that the Respondent registered the disputed domain names with full knowledge of the Complainant and its rights in the Trademark as the Respondent is using four of the disputed domain names to forward Internet users to a website which includes the Complainant's protected PENTAIR device logo.

As to bad faith use, by using four of the disputed domain names in connection with the websites mentioned above, the Respondent was, in all likelihood, trying to divert traffic intended for the Complainant's website to its own for commercial gain as set out under paragraph 4(b)(iv) of the Policy. Furthermore, with regard to the disputed domain name "pentair001.com", which has not been used in connection with an active website so far, the Panel finds that the circumstances in the present case support a finding that the passive holding of a such domain name is to be considered to be in bad faith under the Policy, as the PENTAIR Mark is well established, as the Respondent failed to submit a response or to provide any evidence of actual or contemplated good-faith use, and as, in the present case, the Panel assumes that a good faith use of the domain name is implausible.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **pentair333.com**: Transferred
2. **pentair123.com**: Transferred
3. **pentair001.com**: Transferred

4. pentair3.com: Transferred
 5. pentair33.com: Transferred
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PANELLISTS

Name	Peter Müller
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DATE OF PANEL DECISION 2023-06-30

Publish the Decision
