

Decision for dispute CAC-UDRP-105619

Case number	CAC-UDRP-105619
Time of filing	2023-08-09 10:05:18
Domain names	pentairserviceconnect.com, pentairstoreserviceconnect.com, pentairtwmserviceconnect.com

Case administrator

Name	Olga Dvořáková (Case admin)
------	-----------------------------

Complainant

Organization	Pentair Flow Services AG
--------------	--------------------------

Complainant representative

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

Respondent

Name	Lei Shi
------	---------

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 registered proprietor of various trademarks worldwide, including:

- Chinese device mark PENTAIR with registration number 3504734 registered on April 28, 2006 for, *inter alia*, brushes, insulated containers and cleaning appliances;
- Chinese device mark PENTAIR with registration number 11517821 registered on August 21, 2014 for, *inter alia*, business management consulting in the fields of water and wastewater treatment systems;
- United States trademark PENTAIR with registration number 2573714 registered on May 28, 2002 for, *inter alia*, pumps;
- United States trademark PENTAIR with registration number 4348967 registered on June 11, 2013 for, *inter alia*, pumps, water purifying apparatus and containers; and
- European Union device mark PENTAIR with registration number 011008414 registered on January 23, 2013 for, *inter alia*, pipers and tubes, valves, environmental sensors and detectors, and water purification and filtration apparatus.

FACTUAL BACKGROUND

The Complainant is a business within the Pentair Group of companies, which was founded in 1966 and is active in the water industry. The Pentair Group has over 11,000 employees in 135 locations in 26 countries, and its net sales were approximately USD 4.1 billion.

The Complainant's trademark PENTAIR has been used since 1966 and is a well-established mark in water treatment around the world, including in China. The Respondent bears no relationship to the Complainant and its PENTAIR trademarks, and the disputed domain names have no other meaning except for referring to the PENTAIR trademarks along with the typo variant of the relevant term "connect" plus the addition of the term "service" (in all three disputed domain names) and the relevant terms "store" and "twm", respectively, which add no distinguishing character and does not prevent a finding of confusing similarity between the disputed domain names and the PENTAIR trademarks. The disputed domain names are not being used in connection with a bona fide offer of goods or services as they resolve to pay-per-click websites with related links. The deliberate use of several misspellings of an important and relevant term for Complainant, namely "Pentair Service Connect" points to a finding that the disputed domain names were registered in bad faith. Inference of bad faith registration and use of the disputed domain names is also given from the Respondent's response to the Complainant's cease and desist letter where the Respondent offered the disputed domain names for sale to the Complainant for USD 5,199 – a price well in excess of the Respondent's out-of-pocket costs. Additionally, all three disputed domain names currently have active MX records, meaning that e-mails can be sent from an address that would be likely to make a recipient believe that it is a legitimate communication from the Complainant. The Complainant alleges that there is an evident pattern of conduct in which the Respondent has registered at least the three disputed domain names involving the PENTAIR trademark. Such a pattern of abusive conduct constitutes evidence of bad faith.

The disputed domain names were registered on April 27, 2023 and resolve to pay-per-click websites, and have been set up with MX records.

PARTIES CONTENTIONS

Complainant's contentions are summarised above.

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 is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

Language of the proceeding

The Rules, paragraph 11, state: "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."

According to the disputed domain names respective registrars the language of the Registration Agreements is Chinese. The Complainant requests that the English language should be the language of the proceeding rather than the Chinese language for the following reasons:

- evidence suggests that Respondent is acquainted with the English language.;
- the disputed domain names include Latin characters, and include the term "Pentair," with additional generic yet related expressions like "service" and the typo variant of the relevant term "connect", as well as "store" and "twm" (representing the Complainant's "Total Water Management" program) in the disputed domain names <pentairstoreserviceconect.com> and <pentairtwmserviceconect.com>, respectively. All these words are in English and utilize the Roman script, which is also employed in the English language;
- it would be unfair to proceed in the Chinese language because to do so would result in considerable delays to the proceedings, and

- unnecessary expenses for the Complainant to prepare translations of the Complaint and all associated Annexes;
- the business language of the Complainant and its authorized representative is English, and it would be burdensome for both to consider this proceeding in Chinese.

According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, par. 4.5.1 “(..) paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case”, and against this background the Panel needs to decide if the Respondent likely understood the Complaint and was able to file a Response. Although many circumstances may assist the Panel in finding the answer, in this case the mere fact that the disputed domain names consisting of Latin and not Chinese characters is insufficient to establish that the Respondent must therefore also have a basic understanding of the English language. However, the Complainant filed evidence of communication between the Complainant and the Respondent of June 23, 2023, which showed that the Respondent replied in English. The Panel infers from this correspondence that the Respondent has, at least, a basic understanding of the English language. On balance, the Panel considers the proceedings can proceed in the English language under this circumstance.

Consequently, the Panel accepts the Complainant's request and considers that it is appropriate to proceed to determine the proceeding in the English language.

Further, 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 Panel finds that the disputed domain names are confusingly similar to the Complainant's PENTAIR trademarks, which were registered prior to the registration of the disputed domain names. The disputed domain names wholly incorporate the Complainant's PERNTAIR trademarks. The fact that the terms “service conect” – with “conect” being an intentional misspelling of the word “connect” – and “store” and “twm” are added does not eliminate the similarity between Complainant's trademarks and the disputed domain names, and in fact may even enhance the confusing similarity between the Complainant's trademarks and the disputed domain names in view of the Complainant's use of “Pentair Service Connect” and its use of the abbreviation “TWM” to describe its “Total Water Management” program for its services.
2. The Complainant must make a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names, which the Respondent may rebut (e.g., Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455). The Panel takes note of the various allegations of the Complainant and in particular, that that the Respondent has never legitimately been known by the dispute domain names and has not been licensed or authorized to use the PENTAIR trademarks in the disputed domain names. These allegations of the Complainant remain unchallenged. Furthermore, the Panel finds that the Complainant has demonstrated that the websites to which the disputed domain names are redirected displays pay-per-click (PPC) links that redirect Internet users to other websites, which the Panel understands offer products and services which compete with those of the Complainant. Although a website containing PPC links does not per se constitute any illegitimate or illegal activity (e.g., Lardi Ltd v. Belize Domain WHOIS Service Ltd., WIPO Case No. D2010-1437), the Panel finds that there is no bona fide use of the disputed domain name by the Respondent as the Respondent misleadingly diverts Internet users to the websites in order to direct them towards using the PPC links, with products and services competing with the Complainant. Such use cannot be considered a bona fide use, nor a fair or noncommercial use.
3. In the absence of a Response, and given that “Pentair” is not a dictionary and/or commonly used term but rather a registered trademark with a reputation, the Panel infers that the Respondent must have had the Complainant's PENTAIR trademark in mind when registering the disputed domain names, which were therefore registered in bad faith. The evidence submitted by the Complainant demonstrates that the Respondent also uses the disputed domain names in bad faith. As mentioned, sub 2 above, the Panel finds that the Respondent misleadingly diverts Internet users to the website in order to direct them towards using the PPC links. Thereby, the Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the PENTAIR trademarks as to the source of the Respondent's websites. This constitutes use of the disputed domain names in bad faith. This is further enhanced by the fact that the Respondent also set up Mail Exchange records (“MX records”) which enable sending and receiving e-mails from the disputed domain name. In absence of a Response the Panel considers it likely that the disputed domain names may have been used for unlawful purposes (e.g., BOLLORE SE v. Contact Privacy Inc. Customer 1247853759 / Angela Chaney, WIPO Case No. D2020-2050 and PrideStaff, Inc. v. Perfect Privacy, LLC / Marcheta Bowlin, Midwest Merchant Services, WIPO Case No. D2021-3165).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **pentairserviceconnect.com**: Transferred
- 2. **pentairstoreserviceconnect.com**: Transferred
- 3. **pentairtwmserviceconnect.com**: Transferred

PANELLISTS

Name **Alfred Meijboom**

DATE OF PANEL DECISION 2023-09-10

Publish the Decision