

Decision for dispute CAC-UDRP-105848

Case number **CAC-UDRP-105848**

Time of filing **2023-10-11 10:22:13**

Domain names **pentaireurope.blog**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **Pentair Flow Services AG**

Complainant representative

Organization **HSS IPM GmbH**

Respondent

Name **Victor Panasyuk**

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <pentaireurope.blog> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade marks, amongst others:

- United States trade mark registration no. 2573714, registered on 28 May 2002, for the word mark PENTAIR, in class 7 of the Nice Classification;
- Chinese trade mark registration no. 3504734, registered on 28 April 2006, for the figurative mark PENTAIR, in class 21 of the Nice Classification; and
- EU trade mark registration no. 011008414, registered on 23 January 2013, for the figurative mark PENTAIR, in classes 6, 7, 9, 11 and 42 of the Nice Classification.

(Hereinafter, collectively or individually 'the Complainant's trade mark' or 'the trade mark PENTAIR' interchangeably).

The disputed domain name was registered on 13 June 2023 and, at the time of writing this decision, it resolves to an active website, the particulars of which are discussed further below ('the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant is part of the Pentair group of companies, founded in 1966, whose business area is water treatment and sustainable applications. The brand PENTAIR was coined by the five company founders in the suburban St Paul, Minnesota, USA, and is composed of the Greek word 'penta', representing the five founders, and 'air' which is a reference to the products they planned to produce. The business diversified across the years before becoming a leader in water related products.

The Complainant is present in 26 countries and employs more than 11,000 personnel worldwide. In 2022, the Complainant generated a net sales of c. USD 4.1bn.

In addition to the trade marks mentioned in the above section 'Identification of Rights', and other trade marks in its portfolio, the Complainant owns numerous domain names which contain the term 'pentair' and were registered long before the disputed domain name, most notably <pentair.com>, which was registered in 1996 and resolves to the Complainant's official website.

B. Respondent's Factual Allegations

The Respondent has defaulted in this UDRP administrative proceeding and has therefore made no factual allegations.

PARTIES CONTENTIONS

A. Complainant

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is identical or confusingly similar to trade marks in which the Complainant has rights

The Complainant submits that the disputed domain name is confusingly similar to the Complainant's trade mark PENTAIR. The addition of the geographical term 'europe' to the trade mark PENTAIR is insufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trade mark.

Relying on previous WIPO UDRP decisions and the WIPO Panel Views on Selected UDRP Questions, Third Edition ('the WIPO Jurisprudential Overview 3.0'), paragraphs 1.7 and 1.8, the Complainant contends that UDRP panels have decided previously that insofar as the relevant trade mark is incorporated into the domain name, the addition of other terms to the domain name string would not prevent a finding of confusing similarity under the UDRP Policy. The Complainant also takes stock of the WIPO Jurisprudential Overview 3.0, paragraph 1.11, to support its claim that the generic Top Level Domain ('the gTLD') suffix (in this case, <.blog>) is typically disregarded in the assessment under paragraph 4(a) of the UDRP Policy when comparing disputed domain names and trade marks.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent does not carry out any activity for, or has any business with, the Complainant. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant's trade mark PENTAIR. Moreover, the Respondent is not known by the disputed domain name.

The Complainant further asserts that the Respondent's website appears to be used to defraud Internet users into providing their confidential personal information to the Respondent. Moreover, the Respondent's website contains the Complainant's both logo and trade mark PENTAIR and, despite the appearance of a blog/news type, it does not host actual text within. The Complainant therefore claims that this demonstrates neither a bona fide offering of goods nor a legitimate interest of the Respondent.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant advances the following grounds in support of a finding of registration in bad faith:

- The trade mark PENTAIR long predates the registration of the disputed domain name;
- The Respondent has never been authorised by the Complainant to register the disputed domain name nor does the Complainant have any relationship with the Respondent;
- The Complainant registered the trade mark PENTAIR in numerous countries worldwide and the trade mark PENTAIR has been used by the Complainant's group for several decades; and
- The trade mark PENTAIR is distinctive and widely known in its business sector.

Use

The Complainant advances the following grounds in support of a finding of use in bad faith:

- The Respondent's website is a blog/news type on which the the trade mark PENTAIR is prominently displayed;
- The Respondent's website mimics many features of the Complainant's own official European blog at www.pentair.eu/blog;
- The Respondent has failed to respond to the Complainant's cease and desist letter;
- The Respondent's website does not contain text within the blog posts; and
- The Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent has defaulted in this UDRP administrative proceeding and has therefore failed to advance any substantive case on the merits.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to trade marks in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 name (within the meaning of paragraph 4(a)(ii) of the UDRP Policy).

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 UDRP 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

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the grounds which the Complainant must establish to succeed:

- (i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'PENTAIR' since 2002.

The disputed domain name is <pentaireurope.blog> and the Complainant's trade mark is PENTAIR.

The Panel notes that the Complainant's trade mark PENTAIR is wholly incorporated into the disputed domain name, the only difference being the contiguous geographical term 'europe'. This additional term has no material bearing on the confusing similarity assessment, such that the disputed domain name clearly evokes the Complainant's trade mark PENTAIR.

In addition, the gTLD <.blog> is typically disregarded by UDRP panels under this UDRP Policy ground (see WIPO Jurisprudential Overview 3.0, paragraph 1.11).

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP administrative proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name (as an individual, business or other organisation); and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Panel is furthermore unconvinced that, before any notice of this UDRP administrative proceeding, the Respondent used, or made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

The Respondent has failed to refute the Complainant's prima facie case that it has met the burden under the second UDRP Policy ground. Instead, there is robust indicia that the Respondent has attempted to create a misleading sense of affiliation with the Complainant, as discussed in section D below.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

Registration

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been using the trade mark PENTAIR since at least 2002;
- The Complainant operates its activities through the almost identical domain name <pentair.com>, which was registered in 1996. Importantly, the Complainant also operates an EU blog platform through the domain name <pentair.eu>, which was registered in 2006;
- The disputed domain name <pentaireurope.blog> was registered in 2023;
- The Respondent's lack of participation in the course of this UDRP administrative proceeding;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name; and
- UDRP panels have consistently held that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business.

Use

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

'(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location'.

The Panel notes that the Respondent's website displays the Complainant's trade mark PENTAIR and logo in a rather prominent manner, in addition to mimicking the Complainant's website's look and feel. There are also numerous references to PENTAIR throughout the Respondent's website. The Respondent's behaviour suggests that the disputed domain name may have been registered for a potential financial gain, ie to misleadingly divert Internet users to the Respondent's website and inviting them to disclose potentially sensitive personal information through the Respondent's website (circumstance 4 above). In particular, the Panel finds that the Respondent has attempted to suggest an affiliation with, or a connection to, or an endorsement of the Complainant or even to impersonate the Complainant through the use of the Complainant's trade mark in the dispute domain name string and on the

Respondent's website in the manner described above. The Respondent's conduct would therefore fall into the remit of paragraph 4(b) (iv) of the UDRP Policy.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **pentaireurope.blog**: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION **2023-11-13**

Publish the Decision
