Decision for dispute CAC-UDRP-106103

Case number	CAC-UDRP-106103
Time of filing	2023-12-27 10:13:16
Domain names	pentairbenefitscente.com, pentairbenefitscentre.com, pentairbenfitscenter.com, pentairbenifitscenter.com, pentairbenefitcenter.com

Case administrator

Name	Olga Slanařová (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 owns the registered trademark PENTAIR in numerous territories, including in China where the Respondent is located, for example:

1.Chinese national mark, Pentair logo, registered no. 11517821 on 20 September 2012;

2. Chinese national mark, Pentair logo, registered no. 3504734 on 28 March 2003;

3. US national mark, Pentair, registered no. 2573714 on 28 May 2002;

4. US national mark, Pentair logo, registered no. 50003584 on 1 July 2012;

5. US national mark, Pentair word, registered as no. 4348967 on 20 April 2012;

6. EUTM, Pentair logo, registered no. 011008414 on 2 July 2012.

Pentair Inc, an affiliated company of Complainant, owns the domain names www.pentair.com, registered in 1996, www.pentair.net, registered in 2003, www.pentair.org, registered in 2010, www.pentairbenefits.com, registered in 2014, and

www.pentairbenefitscenter.com, registered in 2023.

The Complainant relies on its use in trade and says it is a well-known mark, due to the extensive use, advertising and revenue associated with its trademarks worldwide.

The trademark PENTAIR has been subject of past disputes under the UDRP Policy:

1.CAC No. 105279, Pentair Flow Services AG v. li jiang concerning the domain names wwwpentairbenefits.com etc;

2.CAC No. 102845 Pentair Flow Service AG v. Super Privacy Service LTD c/o Dynadot concerning the domain names mypentairbenfits.com etc;

3.CAC Case No. 102894 Pentair Flow Service AG v. Frank Peters concerning the domain name pentairr.com; CAC Case No. 102705 Pentair Flow Service AG v. Huang Jialong concerning the domain name PentairEverPure.com; and

4.CAC Case No. 104955 Pentair Flow Service AG v. Hassan Ahmed concerning the domain pentairulantikon.com.

The Complainant prevailed in all of the aforementioned disputes.

FACTUAL BACKGROUND

The Complainant is Pentair Flow Services AG, part of the Pentair Group of companies ("Pentair Group"). It was founded in 1966, by five men intent on manufacturing high-altitude balloons in suburban St. Paul, Minnesota. The name PENTAIR is fanciful and distinctive and was coined by the company founders from the Greek "penta" for the five founders and "air" referring to product. The business grew and diversified ultimately becoming the leader in water-related products and services the Pentair Group is today.

The Pentair Group is a leader in the water industry, with companies around the world, including Pentair Plc, Pentair Filtration Solutions LLC, Pentair Filtration, Inc, Pentair Inc, and the Complainant, among others. The official website of Pentair's Group is found at www.pentair.com. From approximately 135 locations in 26 countries, the Pentair Group has over 11,000 employees. The Pentair Group's 2022 net sales were approximately $4.1 billion.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant says five disputed domain names directly and entirely incorporate Complainant's registered trademark PENTAIR along with typographical variants of the words "benefits" and "center". It says these minor misspellings are "typosquatting" and the addition of dictionary or descriptive term to a complainant's mark are not material to a finding of confusing similarity in this respect (see sections 1.8 and 1.9 of the WIPO Overview 3.0.

It also says that the disputed domain names are not being used in connection with a bona fide offering of goods or services. At the time of the Complaint, they resolve to pay-per-click websites showing generic links. According to the WIPO Overview 3.0, "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''. The use of typo variants of the terms "benefit" and "center" 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 Center" The Complainant has not found that Respondent is commonly known by the disputed domain names or that it has any interest in them. According to the Registrar Verification, the Respondent is an individual located in China with the name "Lei Shi". The Complainant has not found any evidence that Respondent has made any known legitimate, non-commercial use of the disputed domain names. The Complainant is also concerned that there may be a more malicious intent as discussed below under the bad faith third element due to the potential to generate phishing activity and attacks. There is no evidence that Respondent has a history of using or is currently preparing to use the disputed domain names in connection with a bona fide offering of goods and services.

The Complainant's PENTAIR mark is distinctive and widely known in its sector.

For example: Pentair was named as one of America's best employers for women in 2022 by Forbes and was awarded the 2022 ENERGY STAR® Partner of the Year – Sustained Excellence Award from the U.S. Environmental Protection Agency (EPA) and the U.S. Department of Energy and in an industry survey, Pentair was named the Brand Most Used in a vote of industry professionals across the U.S. Further, as mentioned above, when entering the terms "PENTAIR" and ''BENEFITS'' and "CENTER" in the Google search engine, the returned results point to Pentair's Group and its business activity. That points to an inference of knowledge and therefore of bad faith targeting.

All five of the disputed domain names have active MX records. The presence of MX records means that emails could be sent from the variant email 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. This is highly concerning to the Complainant, as there can be no good reason for a party to be able to impersonate the Complainant. Finally, the Respondent appears to have been involved as an unsuccessful respondent in at least 40 other UDRP proceedings, concerning well-known trademarks including Facebook, Walmart, Google and others. This is a pattern under the Policy.

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 Complainant submits the following common factors are applicable to all five of the disputed domain names and these cases should therefore be consolidated:

1. All five disputed domain names were registered on the same day.
2. The disputed domain names all contain very similar typographical variants of the term “Pentair benefits center.”
3. The disputed domain names share the same or similar pay-per-click content.
4. The disputed domain names share the same or similar IP addresses, namely 104.247.82.53 for com and pentairbenefitcenter.com, and three consecutive IP addresses 104.247.81.52, 104.247.81.53, 104.247.81.54 for the remaining three disputed domain names.
5. The disputed domain names were all registered by the same registrar, namely Chengdu west dimension digital technology Co., LTD Chengdu West Dimension Digital Technology Co., Ltd.

The Complainant’s consolidation requests are not opposed, and the criteria are satisfied, and this is granted.

The request as to the language of the proceeding is also granted. The Registration agreement is in Chinese, but the Respondent remained inactive in these proceedings and did not contest Complainant´s request to hold the proceeding in English language.

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

Under paragraph 4(a) of the UDRP, the Policy, a complainant can only succeed in administrative proceedings if the panel finds:

(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 in respect of the domain name; and

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

A complainant must prove that each of these three elements are present.

There is no question that the Complainant has rights in the name and mark “PENTAIR” and it is registered in many jurisdictions and the Panel is also, satisfied that as a result of the extensive use made of it worldwide since 1966, it is a well-known mark. Other panelists have made the same finding.

The disputed domain names all contain that name and mark in full with the addition of the generic words “benefits” and “centre”, with slight but different variations or typographic errors. This is classic typosquatting –and it was clearly deliberate as these five different variations were all registered by the Respondent on the same day.

As to the second limb, a complainant is only required to make out a prima facie case that a respondent lacks rights or legitimate interests and then the burden shifts to the respondent to show it has rights or legitimate interests in the domain name. If it fails to do so, the complainant is deemed to have satisfied the limb in paragraph 4(a) (ii). See WIPO Case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd. The Complainant has discharged its burden on this limb. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. See the Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>.

Here, the Respondent is not known by the name in the WHOIS records. The Respondent has not come forward. No legitimate use appears on the face of the matter. Non-use or minimal use is not bad faith per se. This is highly fact sensitive, and all other circumstances will be carefully considered. Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. It is also relevant that they are all .com domains –which suggests that they are an official site. Often, where there is no website, the purpose will be for emails. In such a case, the Panel is entitled to draw such inferences as are appropriate and they are that registration was not for a legitimate purpose or interest. The Respondent has therefore been granted an opportunity to come forward and answer or present compelling arguments that he has rights or legitimate interests in the disputed domain names but has failed to do so. The Complainant has discharged its burden.

Here the domains all point to the same pay per click content and share IP addresses and their MX records are all configured. The configuration of MX records suggests that the purpose was phishing or fraud. Such purposes include sending email, phishing, identity theft, or malware distribution. WIPO Overview 3.0, section 3.4. See, e.g., DeLaval Holding AB v. Registration Private, Domains By Proxy LLL / Craig Kennedy, WIPO Case No. D2015-2135.The Respondent also has a pattern of bad faith registration.

The Panel finds the Complainant has discharged its burden on all factors and on bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **pentairbenefitscente.com**: Transferred
2. **pentairbenefitscentre.com**: Transferred
3. **pentairbenfitscenter.com**: Transferred
4. **pentairbenifitscenter.com**: Transferred
5. **pentairbenefitcenter.com**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2024-01-29

Publish the Decision