

Decision for dispute CAC-UDRP-104955

Case number	CAC-UDRP-104955
-------------	-----------------

Time of filing	2022-11-01 09:09:09
----------------	---------------------

Domain names	pentairulantikon.com
--------------	----------------------

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
--------------	---------------------------------

Complainant

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

Complainant representative

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

Respondent

Name	Hassan Ahmed
------	--------------

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 name.

IDENTIFICATION OF RIGHTS

The Complainant is the holder of various trademarks including the following:

- PENTAIR, U.S. word mark registration No. 4348967 registered on June 11, 2013 in classes 7, 9, 11 and 20; and
- PENTAIR, EU figurative mark registration No. 011008414 registered on January 23, 2013 in classes 6, 7, 9, 11 and 42.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant, Pentair Flow Services AG, is part of a group of companies which is active in water treatment. The Complainant's group has more than 11,000 employees working from approximately 120 locations in 25 countries. The Complainant's group 2021 net sales were approximately \$3.8 billion.

The Complainant is the owner of several trademarks consisting of or including the term PENTAIR, registered in several classes and covering various countries.

One of the Complainant's affiliates, Pentair Inc., owns domain names such as <pentair.com> and <pentair.net> which resolve to the Complainant's group official website.

The disputed domain name <pentairulantikon.com> has been registered on July 6, 2022. According to evidence provided by the Complainant, the disputed domain name resolved to a website purporting to offer flight comparison and booking services. The disputed domain name currently resolves to a parking page mentioning that "This Account has been suspended".

On September 21, 2022, the Complainant sent a cease-and-desist letter to the Respondent. The Respondent replied by stating that "we are only providing the domain not owning any domain" and by inviting the Complainant to contact a third party. The Complainant did contact this third party but according to the Complainant, it received no response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant finds that the disputed domain name is not being used in connection with a bona fide offering of goods or services. The Complainant has not found that the Respondent is commonly known by the disputed domain name or that the Respondent has any interest in the disputed domain name. Also, according to the Complainant, the Respondent has not been authorized to use the Complainant's trademarks and is not related in any way with the Complainant. The Complainant has not found any evidence that the Respondent has made any known legitimate, noncommercial use of the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent knew or should have known of the Complainant's trademark. According to the Complainant, the Respondent registered and used the disputed domain name by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's products, services, website or location. In addition, the Complainant claims that there is a risk of phishing scams or other fraudulent misconduct through the disputed domain name, as the email function linked to the disputed domain name is enabled.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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 name (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 name has been registered and is 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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the complainant to make out its case, and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before an order can be made to transfer a domain name. The standard of proof is the balance of probabilities.

Thus, for the complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Confusing similarity of the disputed domain name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of registered PENTAIR trademarks, which are used in connection with the Complainant's water treatment business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name <pentairulantikon.com> incorporates the Complainant's PENTAIR trademark in its entirety, adding the term "ulantikon". In the Panel's view, this addition does not prevent the Complainant's trademark from being recognizable within the disputed domain name (see section 1.8 of the WIPO Overview 3.0).

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

For these reasons, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Hassan Ahmed". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). In this case, the disputed domain name incorporates the Complainant's PENTAIR trademark in its entirety and adds the term "ulantikon". As evidenced by the Complainant, this term has no meaning in English but may be a Finnish word meaning "outer shell", which can be linked to the Complainant as the outer shell is an important aspect of the specifications of the Complainant's tank products. Either way, the Panel finds that in the circumstances of this case the disputed domain name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, such as the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not (see sections 2.5.2 and 2.5.3 of the WIPO Overview 3.0).

According to the Complainant's evidence, the disputed domain name resolved to a website purporting to offer flight comparison and booking services. However, according to the Complainant, the website included no working links and no searching or booking facilities. The Panel finds no evidence of either bona fide use or legitimate noncommercial use of the disputed domain name.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response

from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

The Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. *Telstra Corporation Limited v. Nuclear Marshmallow*, WIPO Case No. D2000-0003; *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see *Red Bull GmbH v. Credit du Léman SA*, Jean-Denis Deletraz, WIPO Case No. D2011-2209; *Nintendo of America Inc v. Marco Beijen*, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070). In the instant case, the Panel finds it likely that the Respondent had knowledge of the Complainant's rights in the PENTAIR trademark at the moment it registered the disputed domain name:

- the disputed domain name includes the Complainant's distinctive PENTAIR trademark in its entirety, adding a term which either has no meaning or a meaning which can be linked to the Complainant;
- some of the Complainant's trademarks were registered almost 10 years before the registration of the disputed domain name.

The Complainant provides evidence showing that the email function of the disputed domain name is enabled. In view of the fact that the website linked to the disputed domain name did not appear to provide genuine services, the Panel finds that the use of the disputed domain name for fraudulent activity cannot be excluded, e.g. by profiting of the likelihood of confusion with the Complainant's trademark for phishing activities through the sending of emails.

The fact that the disputed domain name currently resolves to an inactive page does not prevent a finding of bad faith, especially since it appears that the account linked to the disputed domain name has been suspended.

In the present case, the Panel is also of the opinion that the Complainant's PENTAIR trademark is distinctive, which makes it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent.

The Panel also notes that the Respondent did not respond to the Complainant's cease-and-desist letter, except by trying to disclaim responsibility for the disputed domain name in direct contradiction with the registrar verification confirming the Respondent's identity. Therefore, the Panel considers that the inference of bad faith is strengthened.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **pentairulantikon.com**: Transferred

PANELLISTS

Name	Flip Petillion
------	----------------

DATE OF PANEL DECISION 2022-12-13

Publish the Decision
