



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

Fall Nummer: D2003-0693

Entscheidung vom 3. Dezember 2003

1. The Parties

The Complainant is PepsiCo, ... United States of America.

The Respondent is Pha... Inc., of Paris, of France.

2. The Domain Names and Registrar

The disputed domain names <pepsibillions.com>, <pepsimash.com.com>, <pepsi-smash.com>, <pepsismashshow.com>, <pepsismashtvshow.com>, <pepsismashwb.com>, <pepsisweeps.com> and <wbpepsismash.com> are registered with IDR Internet Domain Registry Ltd.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 3, 2003. On September 4, 2003, the Center transmitted by email to IDR Internet Domain Registry Ltd., a request for registrar verification in connection with the domain name(s) at issue.

On September 8, 2003, IDR Internet Domain Registry Ltd. transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing, and technical contact. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 12, 2003. In accordance with the Rules, paragraph 5(a), the due date for Response was October 27, 2003. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 31, 2003.

The Center appointed Jacques A. Léger as the Sole Panelist in this matter on November 18, 2003. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Through its attorneys, Complainant has asserted the following facts, which were not contradicted:

- Complainant is PepsiCo, Inc., manufacturer of the famous soft drink Pepsi Cola, which was invented by Mr. Caleb Bradham in North Carolina in 1898.

- According to the evidence submitted, Complainant is the owner of several trademarks that are amongst the most notorious in the world, including PEPSI-COLA, which was used for the first time for soft drinks in 1898 and PEPSI, the shortened version, which was used for the first time for soft drinks in 1911. The trademarks PEPSI and PEPSI-COLA and the various logos accompanying those marks that have evolved over the last 100 years have been registered in virtually every country in the world.
- Complainant owns several registrations with the USPTO for PEPSI (Reg. No. 824,150, 1,317,551, 1,488,547, 2,100,417 and 2,104,304 amongst others) as well as in several countries, including the European Community (Reg. No. 000105247). Complainant has also submitted that it has a pending application for PEPSI SMASH, filed as intent to use on May 1, 2003.
- A valuation of the PEPSI brand and other brands conducted by Financial World in 1997, estimated the worth of the PEPSI brand as \$9.37 billion U.S. Further, an October 2001 study by ACNielsen, a leading independent marketing information company, concluded that PEPSI was the number two brand among the billion-dollar brands in the beverage category. Notably, retail sales of PEPSI alone in 2001 were over \$15 billion.
- The PEPSI brand has been ranked No. 2 on the list of the top ten grocery food brands in the United States, as it appears from the evidence submitted "Brand Ranking Across 266 Categories in Grocery, Total U.S. Food," for the 52-week period ending November 5, 2000, as compiled by Information Resources, Inc.
- Complainant has continuously owned and used numerous Internet domain names for active websites, which are formatives of its famous PEPSI mark and PEPSICO trade name, including, for example, <pepsi.com>, <pepsismash.com>, <pepsico.com>, <pepsiworld.com>, <pepsibusiness.com>, <pepsiretail.com>, <pepsifountain.com>, <pepsivending.com>, and <pepsicjobs.com>. The Complainant also owns and uses numerous domain names featuring its beverage product names for active websites, including, for example, <dietpepsi.com>, <pepsione.com>, <pepsiblue.com>, and <pepsitwist.com>.
- Respondent, Pha... Inc., a company located in Paris, France registered the disputed domain names <pepsibillions.com> on June 9, 2003, <pepsisweeps.com> on June 9, 2003, <wbpepsismash.com> on June 22, 2003, <pepsi-smash.com> on June 22, 2003, <pepsimash.com> on June 22, 2003, <pepsismashshow.com> on June 22, 2003, <pepsismashtvshow.com> on June 22, 2003, and <pepsismashwb.com> on June 22, 2003.
- The "www.pepsibillions.com" and "www.pepsisweeps.com" websites redirect browsers to a website located at "www.amaturevideos.nl/hanky-panky-party.html" entitled "Hanky-Panky-College," which in turn directs the viewer to (i) an apparently commercial pornographic website located at "www.hanky-panky-college.com, and (ii) an apparently commercial website located at "www.yes-yes-yes.com." The "www.wbpepsismash.com," "www.pepsi-smash.com," "www.pepsimash.com," "www.pepsismashshow.com," "www.pepsismashtvshow.com," and "www.pepsismashwb.com" websites redirect browsers to the "www.yes-yes-yes.com website.

5. Parties' Contentions

A. Complainant

1. Rights in Mark

Complainant's basis for its complaint is its use, registration, and ownership of the PEPSI mark and numerous other trademarks and domain names incorporating the PEPSI mark, including without limitation PEPSI SMASH and PEPSISMASH.COM.

Complainant is the owner of the world-famous PEPSI name and mark. For more than a century, the PEPSI-COLA name and mark, and its shortened version, PEPSI, have been continuously used to identify one of the world's most famous brands of soft drinks and soft drink concentrates, which are currently sold in virtually all countries of the world.

The PEPSI trademark is among the most famous marks in the world. In fact, the trademark PEPSI enjoys a strong reputation beyond the soft drinks for which the company is most famous.

Indeed, the PEPSI trademark and brand has been recognised as being famous. For instance, in *PepsiCo, Inc. v. Diabetes Home Care, Inc. & DHC Services*, WIPO Case No. D2001-0174, an Administrative Panel of the WIPO Arbitration and Mediation Center found that the PEPSI mark "is one of the world's most famous and valuable, a fact the Panel can corroborate with its knowledge ex officio." *Id.*; see also, e.g., *PepsiCo, Inc. v.*

"null," aka Alexander Zhavoronkov, WIPO Case No. D2002-0562 at paragraphs 6.12, 6.13, 6.15 (PEPSI is a "world-famous" and "universally recognized" mark). Also submitted is a page from the book *The World's Greatest Brands*, published by MacMillan Business in 1996, showing that PEPSI is considered to be one of the most famous trademarks and brands in the world. Complainant carries on an intensive global advertising campaign with respect to its products in the form of advertisements in international magazines, newspapers, television, radio, outdoor signs, point-of-purchase displays, etc., and through sponsorship of major cultural and sporting events. The approximate worldwide advertising and promotional expenses incurred by Complainant since 1991, in respect of soft drink beverages sold under trademarks containing PEPSI, including the various device marks, are in excess of \$200 million U.S. annually. The promotion and exploitation of the PEPSI mark and all related sales, advertising, and promotional activities have generated, and continue to generate, enormous sales of PEPSI products throughout the world.

Complainant sponsors a television show, Pepsi Smash, broadcasted nation-wide on Wednesday evenings in the United States on the WB Network. This one-hour show is hosted by a different WB television star every week and features live musical performances from well-known and up-and-coming popular musicians. Complainant promotes this show by various means, including through a website with the domain name <pepsismash.com>. Through its exclusive and continuous use of PEPSI SMASH and PEPSISMASH.COM, Complainant has acquired common law trademark rights in and to those marks. See *Ameriquest Mortgage Co. v. Phayze Inc.*, WIPO Case No. D2002-0861. Further, Complainant has filed a trademark application for the PEPSI SMASH mark in the United States.

Complainant recently has been conducting a promotional campaign called "Play for a Billion Sweepstakes." On September 14, 2003, comedian Drew Carey has hosted a two-hour television show on the WB network, entitled "Play For a Billion," in which finalists will compete for large cash prizes including a possible grand prize of \$ 1 billion U.S.

2. Confusingly Similar

Respondent's Domain Names are nearly identical or confusingly similar to Complainant's PEPSI and PEPSI SMASH marks, as they fully incorporate these marks.

The mere addition of common terms such as "show" or "tvshow" to the PEPSI or PEPSI SMASH marks is of no import. See, e.g., *Sony Kabushiki Kaisha (also trading as Sony Corporation) v. Inja, Kil*, WIPO Case No. D2000-1409 (addition of ordinary descriptive word as prefix or suffix to a world-famous mark such as SONY does not detract from overall impression of the dominant part of the name, the famous mark); *America Online, Inc. v. Chris Hoffman*, WIPO Case No. D2001-1184 (use of short phrases with well-known mark still found confusingly similar to that mark); see also *Chernow Communications, Inc. v. Jonathan D. Kimball*, WIPO Case No. D2000-0119, at paragraph 6.4 (use or absence of punctuation marks such as hyphens does not change analysis re: similarity to a mark). Thus, confusing similarity must be presumed.

Respondent's "typo squatting" ? registering <pepsimash.com> rather than <pepsismash.com> ? is an insignificant distinction that does not remove the confusing similarity but rather serves to attract users to its websites. See, e.g., *Ultimate Electronics, Inc. v. Phayze, Inc.*, WIPO Case No. D2002-0851.

In any case, given the unique character of the world-famous PEPSI mark, consumers, on seeing the Domain Names, will reasonably believe that they are related to Complainant. Indeed, consumers who search the Internet for Complainant by using Complainant's name and mark, or who search for information about Complainant's Pepsi Smash television show or "Play for a Billion Sweepstakes" by using such obvious additional terms as "wb," "tvshow," "billions," or "sweeps" may be directed to the Domain Names, creating a likelihood of confusion. See *PepsiCo, Inc. v. Diabetes Home Care, Inc. and DHC Services*, WIPO Case No. D2001-0174.

3. Rights and Legitimate Interests

Since Complainant's adoption and extensive use of the PEPSI mark for nearly a century predates the first use of the Domain Names, the burden is on Respondent to establish its rights or legitimate interests in the Domain Names. See *PepsiCo, Inc. v. Amilcar Perez Lista d/b/a Cybersor*, WIPO Case No. D2003-0174. Here, Respondent cannot demonstrate or establish any such rights or legitimate interests.

There is no relationship between Complainant and Respondent giving rise to any license, permission, or other right by which Respondent could own or use any domain names incorporating Complainant's PEPSI or PEPSI SMASH marks.

Certainly, the Domain Names are not, nor could they be contended to be, a name or nickname of the Respondent, nor are they in any other way identified with or related to any rights or legitimate interests of the Respondent.

Instead, Respondent is using the Domain Names to divert traffic to pornographic and other commercial websites.

Since the PEPSI mark is famous and Respondent has no rights in it, the only reason why Respondent could have wanted to register and use domain names fully incorporating the PEPSI or PEPSI SMASH marks was that it knew of these marks and wanted to use them in the Domain Names in order to confuse Internet users and divert them to other websites for its own benefit and profit, and not for any legitimate non-commercial or fair use purpose. See, e.g., *Ultimate Electronics, Inc. v. Phayze, Inc.*, WIPO Case No. D2002-0851. The use of domain names based on a complainant's trademark to drive traffic to other, pornographic websites has in itself been found to be evidence of a lack of legitimate interest in those domain names. See, e.g., *Voicestream Wireless Corp. v. Phayze 1 Phayze 2; Phayze Inc.*

4. Bad faith

Respondent's bad faith is established by its use of Complainant's PEPSI and PEPSI SMASH marks in the Domain Names (along with terms associated with Complainant's Pepsi Smash television show and Play For a Billion Sweepstakes) to attract and redirect web traffic to pornographic and other commercial websites and pop-up advertisements for its own commercial benefit. See, e.g., *Ultimate Electronics, Inc. v. Phayze, Inc.*, WIPO Case No. D2002-0851; *Ameriquest Mortgage Co. v. Phayze Inc.*, WIPO Case No. D2002-0861.

Moreover, the fact that Respondent has registered without authorization domain names that fully incorporate Complainant's famous PEPSI mark, despite being aware of Complainant's rights in that mark, is in and of itself evidence of bad faith. See, e.g., *Veuve Cliquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163 (bad faith is found where a domain name "is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith"); see also *MatchNet plc v. MAC Trading*, WIPO Case No. D2000-0205 (association of confusingly similar domain name with pornographic website can constitute bad faith); *PepsiCo, Inc. v. "null," aka Alexander Zhavoronkov*, WIPO Case No. D2002-0562, paragraph 6.12 ("blatant appropriation of a universally recognized trademark [PEPSI] is of itself sufficient to constitute bad faith).

Respondent, a notorious domain name squatter, has demonstrated a pattern of registering and using in bad faith domain names clearly based on the well-known names and marks of third parties in order to link them to sites such as those at issue in this case. See *Reckitt Benckiser (UK) Ltd., Reckitt & Colman (Overseas) Ltd. v. Phayze Inc.*, WIPO Case No. D2003-0199 ("Respondent has engaged in a pattern of conduct in which it has used a confusingly similar domain name to a Complainant's trademark"). Respondent has been found to have acted in bad faith in registering and using domain names based on third-party trademarks or names by at least six administrative panels. These include *Reckitt Benckiser (UK) Ltd., Reckitt & Colman (Overseas) Ltd. v. Phayze Inc.*, WIPO Case No. D2003-0199; *Ameriquest Mortgage Co. v. Phayze Inc.*, WIPO Case No. D2002-0861; *Ultimate Electronics, Inc. v. Phayze, Inc.*, WIPO Case No. D2002-0851; *Voicestream Wireless Corp. v. Phayze 1 Phayze 2; Phayze Inc.*, WIPO Case No. D2002-0636; *Target Brands, Inc. v. Phayze, Inc.*, NAF Case No. FA0306000161564; and *Upromise, Inc. v. Phayze, Inc.*, NAF Case No. FA0306000161280.

Respondent's bad faith is further demonstrated by its use of apparently fraudulent contact details. See

PepsiCo, Inc. v. "The Holy See," WIPO Case No. D2003-0229; *Ameriquest Mortgage Co. v. Phayze Inc.*, WIPO Case No. D2002-0861.

In sum, the fact that Respondent has targeted Complainant is clear from the overwhelming fame of Complainant's PEPSI mark and from Respondent's own bad-faith conduct. Clearly, Respondent only could have registered Domain Names confusingly similar to Complainant's PEPSI and PEPSI SMASH marks in order to capitalize on Complainant's hard-earned and valuable goodwill.

B. Respondent

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

6. Discussion and Findings

Pursuant to the Policy, Complainant must convince the Panel of three elements if it wishes to have the domain names transferred. It is incumbent upon the Complainant to cumulatively show:

- (i) that the domain names are identical or confusingly similar to a trademark in which it holds rights; and
- (ii) that the Respondent has no rights or legitimate interests in the domain names; and
- (iii) that the domain names were registered and used in bad faith.

These three elements are considered below.

A. Identical or Confusingly Similar

The Panel is of the opinion that the evidence provided by Complainant supports a finding that Complainant is the owner of the registered trademark PEPSI and that Complainant has rights in that mark.

As to the alleged mark PEPSI SMASH, Complainant has satisfactorily established that it sponsors a television show called "Pepsi Smash," which it promotes by various means, including through a website with the domain name <pepsismash.com>. Complainant further contends that through exclusive and continuous use of PEPSI SMASH and PEPSI SMASH.COM, it has acquired common law trademark rights in and to these marks. Moreover, Complainant has filed a trademark application for the PEPSI SMASH mark in the United States, filed as intent to use on May 1, 2003.

The wording of Paragraph 4(a)(i) has been interpreted by numerous Panels in the past to include both registered marks and the common law marks. See *inter alia* *The British Broadcasting Corporation v. Jaime Renteria*, WIPO Case No. D2000-0050; *United Artists Theatre Circuit, Inc. v. Domains for Sale Inc.*, WIPO Case No. D2002-0005, *The Professional Golfers' Association of America v. Golf Fitness Inc., a/k/a Golf Fitness Association*, WIPO Case No. D2001-0218; *Brooklyn Institute of Arts and Sciences v Fantastic Sites, Inc.* National Arbitration Forum No. FA0009000095560. However, in order to rely on an unregistered mark, Complainant must establish that the mark has been in continuous use and that the mark has achieved secondary meaning ("distinctive character") in association with the Complainant (see *Museum of Science v. Asia Ventures, Inc.*, WIPO Case No. D2003-0691).

Panel has *proprio motu* visited the website located at <pepsismash.com> and found that the first show aired on July 16, 2003. As such, the Panel determines that Complainant first used the PEPSI SMASH alleged mark on July 16, 2003. The alleged mark has thus been used for no more than four months, at best, which is not much. Even if a complainant may rely on an unregistered mark, there is still a minimum of evidence it has to submit in order to demonstrate common law rights. In the case at hand, the Panel is hard pressed to find that Complainant has satisfactorily established secondary meaning in the PEPSI SMASH mark. The Panel has therefore conducted its analysis based solely on the PEPSI mark.

While the domain names are not identical to Complainant's PEPSI mark, the Panel finds that they are confusingly similar. The test of confusion in comparing the words or marks at issue is from the standpoint of the average unwary consumer, looking at the marks in their totality, having an imperfect recollection of the former.

The domain names <pepsibillions.com>, <pepsisweeps.com>, <pepsimash.com.com>, <pepsi-smash.com>, <pepsismashshow.com>, <pepsismashtvshow.com>, <pepsismashwb.com> and <wbpepsismash.com> fully incorporate Complainant's famous PEPSI mark and merely add a generic word, namely "billions" and "sweeps" "mash" (which is a misspelled version of the word "smash"), "smash," "smash show," "smash tv show," "smash wb" (and its reversed equivalent "wb smash"; wb being the television channel Warner Borthers).

It is trite law that the mere addition of a generic term to a famous mark does not preclude a finding of confusing similarity. The Panel adopts the findings in *Viaccess v. Satolivier*, (WIPO Case No. D2003-0361) wherein it was stated that: "The Domain Name incorporates in whole Complainant's famous registered VIACCESS mark and the only deviation is that Respondent has added the number '2' as a suffix. The Panel adopts the finding in *Viacom International Inc. v. MTVMP3.COM*, WIPO Case No. D2001-0275, *Parfums Christian Dior v. Netpower, Inc.*, WIPO Case No. D2000-0022 and *The Tylenol Company v. Farmacias Mexicana, SA DE CV*, WIPO Case No. D2002-0597 where it was decided that the addition of a generic term to a trademark (such as VIACCESS) creates a Domain Name that is confusingly similar to the trademark. Because the Domain Name refers to 'VIACCESS,' consumers are likely to believe that they refer to websites that concern Complainant's products."

Moreover, in the case of <pepsimash.com.com>, as stated by Complainant, Respondent's typo squatting does not remove the confusing similarity, see *Ultimate Electronics, Inc. v. Phayze, Inc*, WIPO Case No. D2002-0851.

The Panel therefore finds that Complainant has satisfactorily met the burden imposed upon it at Policy Paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy inquires as to whether or not the Respondent has any rights or legitimate interests vested in the domain name. Paragraph 4(c) provides examples of circumstances that can demonstrate the existence of such rights or legitimate interests: (i) use of, or preparations to use, the domain name in connection with a *bona fide* offering of goods or services; (ii) the fact that the Respondent has been commonly known by the domain name; and (iii) legitimate non-commercial or fair use of the domain name.

The Panel agrees with Complainant's contention that Respondent has no rights or legitimate interests in the domain names.

First, there is no relationship between the parties giving rise to any license, permission, or other right by which Respondent could own or use any domain names incorporating Complainant's mark.

Second, the Panel agrees with Complainant in that there is no evidence that Respondent has been commonly known by the domain names. In fact, since when typing in the domain names, the Internet user is automatically directed to a pornographic website, it is the Panel's opinion that the Respondent has not been commonly known by the domain names.

Third, the fact that the Respondent uses the domain names to misdirect Internet traffic for its own benefit and profit to a pornographic website located at "www.amaturevideos.nl/hanky-pnky-party.html," which in turn directs the viewer to (i) an apparently commercial pornographic website located at "www.hanky-panky-college.com" and (ii) an apparently commercial website located at "www.yes-yes-yes.com" is neither a *bona fide* offering of goods or services nor a legitimate non-commercial or fair use of the domain names. The Panel relies on the findings expressed in *Cancer Treatment Centers of America, Inc. (CTCA) v. Henry Chan*, WIPO Case No. D2003-0611, as well as in *Voicestream Wireless Corp. v. Phayze 1, Phayze 2, Phayze inc.*, WIPO Case No. D2002-0636: "the Respondent has its domain names linked to pornographic and gambling websites that do not incorporate any of the domain names. Assuming this to be so, then the domain names would lead to a site that offers commercial services unrelated to the domain names which is then evidence that 'the Respondent is seeking to gain advertising or other revenues from mistyped domain name' [...]. The Panel adopts the finding in *World Wrestling Foundation Entertainment, Inc. v. Matthew Bessette*, WIPO Case No. D2000-0256, where no legitimate interests were found because the domain names were used in connection with porn sites. Respondent's use of the Domain Names to link to pornographic websites cannot be considered legitimate or *bona fide*."

Fourth, although not contended by Complainant, the Panel finds that Respondent's failure to respond constitutes further evidence that Respondent lacks rights or legitimate interests in the disputed domain names. In this regard, the Panel refers to its decision in *Pivotal Corporation v. Discovery Street Trading Co.*

Ltd., WIPO Case No. D2000-0648. The Panel is of the opinion that, once lack of legitimate rights or interests has been alleged by a complainant, the respondent is obliged to adequately address this issue. This finding is supported by the various means, which are available to a respondent under the URDP Policy to show legitimate right or interest, on a balance of probabilities.

Therefore, the Panel, relying on *MatchNet plc. v. MAC Trading*, WIPO Case No. D2000-0205, wherein: "The Administrative Panel, as permitted by paragraph 14(b) of the Rules, draws the inference from the respondent's failure to respond to this administrative proceeding, that the complainant is correct in its assertion that the respondent has no rights or legitimate interest in the domain name" finds that the complainant has established *prima facie* that the respondent lacks rights or legitimate interests and therefore has successfully met its second burden, under Policy paragraph 4(a)(ii). See also *Pavillion Agency, Inc. v. Greenhouse Agency Ltd.*, WIPO Case No. D2000-1221 wherein it was found that: "Respondent's failure to respond can be construed as an admission that they have no legitimate interest in the domain names." The Panel thus finds that Complainant has met its burden under Policy Paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

It is often quite difficult to actually show bad faith with concrete evidence. While bad faith cannot be presumed, once the Complainant has presented some evidence pointing in that direction, it is then incumbent upon the Respondent to either respond or explain why its conduct should not be assimilated to bad faith.

The Panel's understanding of the Policy is that although the initial burden to prove the Respondent's bad faith in the registration or the use of the disputed domain name relies squarely on the shoulders of the Complainant and once it has done so, as it did in the present case, it is then incumbent upon the Respondent to either justify or explain its business conduct (if not to demonstrate the contrary). Failure to do so will, in some circumstances, enable the Panel to draw negative inferences.

In the present case, the Panel finds that, since Complainant's trademark PEPSI is federally registered, it is very unlikely that when Respondent registered the domain names, it was not aware that it was infringing on Complainant's trademark rights (see e.g. *Expedia, Inc. v. European Travel Network*, WIPO Case No. D2000-0137 and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003).

Furthermore, the Panel is of the opinion that the domain names are so obviously connected with Complainant's trademark that its very use by someone with no connection with the Complainant suggests "opportunistic bad faith" (see *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. D2000-0226 and *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163).

Moreover, the Panel finds that the evidence, as submitted by Complainant, tends to demonstrate that Respondent registered the domain names with the purpose of intentionally attempting to attract, for its own commercial benefit, Internet users to its website by creating a likelihood of confusion with Complainant's trademark and by using the goodwill and positive reputation attached to the Complainant's PEPSI trademark. See *Snapple Beverage Corp. v. Telmex Management Services*, WIPO Case No. D2002-0114.

Additionally, Respondent's registration of more than one domain name that is confusingly similar to Complainant's service mark further supports the inference that Respondent knew of Complainant's mark and therefore, registered the domain names in bad faith. The Panel adopts such a view as it was expressed in *Royal Bank of Canada v. Henry Chan*, WIPO Case No. D2003-0031.

Also, the Panel greatly considers the fact that several UDRP complaints have been filed against the Respondent. These decisions tend to indicate a pattern by which the Respondent initially registers domain names comprising trademarks or variations of trademarks for which he has no rights, and then links the domain names to websites that directly compete with the owners of the trademarks or that tarnish the goodwill associated with the trademarks.

As in these other UDRP cases, in this case Respondent has registered domain names that are close variations of Complainant's PEPSI trademark. Respondent has linked these domain names to websites that are likely to confuse the Internet user as to the distinction between Complainant's and Respondent's goods and services, whatever they may be. Respondent also uses the domain names in a manner that tarnishes the goodwill associated with the Complainant and its service mark.

Finally, Respondent's bad faith is demonstrated by its use of apparently fraudulent contact details. See *PepsiCo, Inc. v. "The Holy See,"* WIPO Case No. D2003-0229, wherein it was stated that: "Respondent's concealment of its identity by use of a pseudonym and a false address as further evidence of bad faith,

particularly where the pseudonym is itself apt to cause confusion. The Respondent evidently has no respect for other person's rights." The evidence tends to show that all electronic correspondence sent to Respondent did not go through as an error message indicated each time.

In view of all the above, the Panel is of the opinion that the Complainant has discharged of its burden under Policy paragraph 4(a)(iii), and finds that the Respondent has registered and used the domain names in bad faith.

7. Decision

For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain names, <pepsibillions.com>, <pepsimash.com.com>, <pepsi-smash.com>, <pepsismashshow.com>, <pepsimashtvshow.com>, <pepsismashwb.com>, <pepsisweeps.com> and <wbpepsismash.com> be transferred to the Complainant.

(Sole Panelist)