

## ADMINISTRATIVE PANEL DECISION

### Pension Benefit Guaranty Corporation v. Christoffer Jorgen Case No. D2023-4917

#### 1. The Parties

The Complainant is Pension Benefit Guaranty Corporation, United States of America (“United States”), represented by internally.

The Respondent is Christoffer Jorgen, Georgia.

#### 2. The Domain Name and Registrar

The disputed domain name <pbgcs.xyz> is registered with NameSilo, LLC (the “Registrar”).

#### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2023. On November 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (NameSilo, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 1, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on December 4, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), 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 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 2, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 8, 2023.

The Center appointed Federica Togo as the sole panelist in this matter on January 15, 2024. 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**

It results from the Complainant's undisputed allegations that it is a United States Government executive branch agency created under Title IV of the Employee Retirement Income Security Act (ERISA). Since its inception in 1974, the Complainant has operated to guarantee defined benefit schemes for retirees of insolvent companies with under-funded pension plans. The Complainant currently maintains an official website located at the following domain name "www.pbgc.gov" (registered on October 2, 1997).

It has rights in its unregistered trademark PBGC. The Complainant supports its claim to common law trademark protection, asserting that it has amassed significant goodwill through use of the "PBGC" name since 1975 and the exclusive association of the mark PBGC with the Complainant.

The Complainant has provided evidence that it has been identifying itself with the PBGC mark since 1974 when it was created by the Employee Retirement Income Security Act. It is clear from the annual reports provided that the PBGC mark has been used by the Complainant since 1975. The latest annual report submitted by the Complainant (i.e. 2022 Report) states that it covers pensions of approximately 35 million workers which demonstrates awareness of its name and services within the United States. Further the Panel notes that the Complainant is the most popular result on a google search for "PBGC".

The disputed domain name was registered on July 11, 2023. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolved to a parking page displaying Pay-Per-Click ("PPC") links in the Complainant's area of activity.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is nearly identical to the Complainant's domain name <pbgc.gov>, as well as the Complainant's common law trademark PBGC.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Complainant has not given the Respondent license to use its trademark and the Respondent has not registered a similar trademark for its own business or identity and is not commonly known as PBGC. In addition, the disputed domain name is used as a mere parking page providing no real content for Internet users. It leads to sponsored links in the Complainant's area of activity, which leads to the reasonable assumption that the Respondent earns PPC revenue in relation to such sponsored links.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent has registered and used the disputed domain name in bad faith by intentionally attempting to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's established website at the domain name <pbgc.gov>. In fact, the Respondent used the disputed domain name to convey advertising material or clickbait links for financial services.

##### **B. Respondent**

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

## 6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

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

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

In this case, the Complainant does not rely on any registered trademark. It claims that it has common law trademark rights, derived from its use of the name PBGC since 1975. To establish unregistered or common law trademark rights for purposes of the UDRP, the complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant’s goods and/or services. The Complainant has provided evidence that it has been identifying itself with the PBGC mark since 1974 when it was created by the Employee Retirement Income Security Act. It is clear from the annual reports provided that the PBGC mark has been used by the Complainant since 1975. The latest annual report submitted by the Complainant (i.e. 2022 Report) states that it covers pensions of approximately 35 million workers which demonstrates awareness of its name and services within the United States of America. Further the Panel notes that the Complainant is the most popular result on a Google search for the term “PBGC”.

In light of the above, the Panel, as stated also by previous Panels, is satisfied that the identifier “PBGC” has achieved sufficient secondary meaning in association with the Complainant and the Complainant’s services to establish common law trademark rights for the purposes of the Policy (see *Pension Benefit Guaranty Corporation v. John Smith, Whois Protection Service, LLC*, WIPO Case No. [D2008-1370](#); and *Pension Benefit Guaranty Corporation v. Belize Domain WHOIS Service Lt*, WIPO Case No. [D2008-1371](#)).

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In addition, it is the view of this Panel that the addition of the consonant “s” in the disputed domain name results to be a common, obvious, or intentional misspelling of the Complainant’s trademark, and cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark since the disputed domain name contains sufficiently recognizable aspects of the relevant mark (see [WIPO Overview 3.0](#) at section 1.9).

Finally, the generic Top-Level Domain (“gTLD”), “.xyz” of the disputed domain name, may be disregarded under the first element confusing similarity test. The practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to “new gTLDs”); the ordinary meaning ascribed to a particular TLD would not necessarily impact assessment of the first element (see [WIPO Overview 3.0](#) at section 1.11).

Based on the available record, the Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, the Panel notes that the disputed domain name consists of a common, obvious, or intentional misspelling of the Complainant’s unregistered trademark PBGC with the additional letter “s”, so that this Panel finds it most likely that employing a misspelling in this way signals an intention on the part of the Respondent to confuse users seeking or expecting the Complainant.

Furthermore, it results from the undisputed evidence before the Panel that the disputed domain name resolves to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant’s trademark or otherwise mislead Internet users (i.e. a parking page displaying PPC links in the Complainant’s area of activity). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent bona fide offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users (see [WIPO Overview 3.0](#) at section 2.9, with further references). This Panel shares this view. Therefore, such use can neither be considered as bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds the second element of the Policy has been established.

### **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a

likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolves to resolved to a parking page displaying PPC links in the Complainant's area of activity. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

On this regard, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith:

- (i) the nature of the disputed domain name (i.e. a typo of Complainant's trademark);
- (ii) the content of the website to which the disputed domain name directs (i.e. a parking page displaying PPC links in the Complainant's area of activity);
- (iii) a clear absence of rights or legitimate interests coupled with no response for the Respondent's choice of the disputed domain name.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <pbgcs.xyz>, be transferred to the Complainant.

*/Federica Togo/*

**Federica Togo**

Sole Panelist

Date: January 29, 2024