

## **ADMINISTRATIVE PANEL DECISION**

Pension Benefit Guaranty Corporation v. Nanci Nette  
Case No. D2023-4922

### **1. The Parties**

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

Respondent is Nanci Nette, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <mypba.org> (the “Domain Name”) is registered with GoDaddy.com, 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 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent (Name.com, Inc.) and contact information in the Complaint. The Center sent an email communication to Complainant on December 1, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 4, 2023.

The Center verified that the Complaint together with 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 Respondent of the Complaint, and the proceedings commenced on December 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 26, 2023.

The Center appointed Christopher S. Gibson as the sole panelist in this matter on January 3, 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**

Complainant is the Pension Benefit Guaranty Corporation, a United States Government executive branch agency created under Title IV of the Employee Retirement Income Security Act ("ERISA"), Pub. L. 93-406, 88 Stat. 829 (Sept. 2, 1974). Complainant was created (1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants, (2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (3) to maintain premiums established by Complainant at the lowest level consistent with carrying out its obligations. The primary mission of Complainant is to guarantee defined benefit pensions for retirees of insolvent companies with under-funded pension plans.

Complainant has continuously used its acronym, PBGC, as both an insignia and identifier since its creation by act of Congress in 1974, and Complainant uses the domain name <pbgc.gov>.

The Domain Name was registered on August 27, 2022, and resolves to a website displaying pay-per-click links.

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

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

##### **(i) Identical or confusingly similar**

Complainant contends that it has rights in its unregistered trademark, PBGC. In order to establish rights in an unregistered or common law trademark, Complainant states it must show that the name has become a distinctive identifier associated with it or its goods and services. Complainant submits the fact that secondary meaning may exist in a certain geographic area does not limit a complainant's rights in a common law trademark. Complainant urges the same test for common law trademarks applies with regard to an acronym of a complainant's name, where the acronym is not a derivative of a registered trademark.

Complainant states in this case the letters PBGC are more than its acronym; they are also part of Complainant's insignia. Complainant maintains prior UDRP panels have held that extensive and continuous reference to an organization by its acronym is sufficient for it to gain the status of a common law trademark. Complainant has been consistently identified by its acronym, PBGC, and has provided a well-known, continuous public service under that acronym for over thirty years since its creation by act of Congress in 1974. There is no other United States agency known by the acronym PBGC. Further, the letters PBGC are widely known and recognized in the United States to represent Complainant. Any person or business dealing in the area of pension or retirement services (as Respondent purports to be involved) should be aware of the existence and role of Complainant, particularly as it covers the pensions of approximately 44 million workers. From the aforementioned information and logical practice (including that Complainant's domain name is <pbgc.gov>), Complainant claims Internet users would look for Complainant's website using the domain root "PBGC", as opposed to the prohibitively long name "pensionbenefitguarantycorporation".

Finally, Complainant asks the Panel to consider United States trademark law with regard to the soundness of Complainant's decision not to register a trademark. It is uncommon for a department or agency of the United States Government to register a trademark. This practice has evolved from United States trademark law, which prohibits non-governmental entities from federally registering trademarks that suggest a connection

with the United States Government. Section 2 of the Lanham Trademark Act generally forbids the registration of a deceptive mark or one that falsely suggests connection with a particular person or entity, and in particular forbids the registration of any mark that “consists of or comprises the flag or coat of arms or other insignia of the United States”. 15 United States Code sections 1052(a) and (b). Thus, a person or entity in the United States would be prohibited from registering the mark PBGC because Complainant is an agency of the United States Government. In addition to the prohibitions in the Lanham Act, the Federal Trade Commission Act prohibits “unfair or deceptive acts or practices affecting commerce”, such as use of a trademark that appears to represent a government agency. 15 United States Code section 45(a)(1). Thus, having had the protection of established United States trademark laws, Complainant has not formally registered its trademark.

Complainant also submits that the Domain Name is almost identical to many of Complainant’s domain names, distinguished only by a different generic Top-Level Domain (“gTLD”). The root of Respondent’s Domain Name <mypba.org> is nearly identical to many of the lower-level URLs of Complainant’s domain name <pbgc.gov>, as well as to Complainant’s common law trademark PBGC. Complainant has at least two publicly available websites for processing employee retirement benefits, for example: My Pension Benefit Access (“MyPBA”) located at “https://login.mypba.pbgc.gov”; and My Plan Administration Account (“MyPAA”) located at “https://mypaa.pbgc.gov”. Complainant contends where the root of a domain name is nearly identical, the distinction achieved from use of a different gTLD is so de minimus as to be inadequate to prevent confusion from occurring. Thus, Respondent’s Domain Name is confusingly similar to Complainant’s because the only distinction between them is use of a different gTLD, Respondent’s “.org” instead of Complainant’s “.gov”.

Complainant urges the potential for confusion between Respondent and Complainant’s sites is further exacerbated by the fact that many Internet users seeking Complainant’s website are elderly retirees, who often lack familiarity with the Internet. It is common for persons with limited Internet experience to use a common gTLD such as “.com” when seeking a website. Another point of confusion arises because Complainant, though a government agency, is referred to as a “corporation” in its own name. This confusing nomenclature leads many Internet users who are seeking Complainant’s website at a <pbgc.gov> site to the wrong websites with web addresses such as <mypba.org>, <mypba.com>, or <mypbasupport.net>.

(ii) Rights or legitimate interests

Complainant contends Respondent has no rights or legitimate interests in respect of the Domain Name. From all information available, Complainant states Respondent does not appear to have any rights or legitimate interests in the Domain Name.

Here, Complainant claims Respondent is profiting by hosting a Domain Name for a website that’s confusingly similar to sites operated under Complainant’s domain name, exploiting the appearance of Complainant’s credibility or identity to deceive Internet users. Complainant has not given Respondent license to use its trademark and Respondent has not registered a similar trademark for its own business or identity. Complainant argues it is incumbent on Respondent to produce evidence proving its legitimate interests in the Domain Name, because such an issue involves matters which are peculiarly within the knowledge of Respondent.

Respondent is not a corporation or entity commonly known as PBGC, nor commonly known by a name or title that is represented by the acronym PBGC. Moreover, neither Respondent is not in a business commonly associated with the PBGC acronym or PBGC support services. It is unlikely Respondent intends to use its website for a purpose related to pension benefits while Complainant is statutorily mandated to encourage the maintenance and viability of pension plans in the United States. Complainant asks the Panel to protect Complainant and its mission from illegitimate domain name encroachment and impersonation. Complainant further submits that Respondent also does not presently use the Domain Name to offer goods, services or even information. The website only discloses that the Domain Name is in use. Complainant states prior UDRP panels have frequently found that lack of a commercial use can illustrate Respondent’s lack of a legitimate interest in the Domain Name. Thus, Respondent has no rights or interests in the Domain

Name because Respondent does not use it for any purpose other than causing confusion with Complainant's website at "mypba.pbgc.gov".

(iii) Registered and used in bad faith

Complainant claims the Domain Name was registered and is being used in bad faith. Respondent has registered and used it in bad faith by intentionally attempting to attract Internet users to Respondent's website for commercial gain by creating a likelihood of confusion with Complainant's established website at "www.pbgc.gov" and Complainant's My Pension Benefit Access (MyPBA) located at "mypba.pbgc.gov". Complainant states this is a particularly strong case with regard to Respondent's bad faith because Respondent registered the almost identical Domain Name after Complainant registered its domain name <pbgc.gov> in 1997. Moreover, Complainant has been involved in disputes for similar domain names (i.e., <pbgc.net>, and <pbgc.org>), where prior panels transferred those suspicious domain names to Complainant. See *Pension Benefit Guaranty Corporation v. Belize Domain WHOIS Service Lt*, WIPO Case No. [D2008-1371](#), and *Pension Benefit Guaranty Corporation v. John Smith, Whois Protection Service, LLC*, WIPO Case No. [D2008-1370](#). According to the Whois database, the Domain Name was created on August 27, 2022, while websites operated by Complainant under the <pbgc.gov> domain name have been in existence long before then.

Complainant contends Respondent registered its Domain Name in bad faith because the root of the Domain Name is identical to websites operated by Complainant while using its trademark and domain name. Complainant states Respondent used the Domain Name in bad faith by using it to convey advertising material or clickbait links. Complainant submits previous panels have found that the diversion of web traffic, using a complainant's trademark for the purpose of advertising sponsored websites, is bad faith. Moreover, Respondent's use of pay-per-click or clickbait advertising further evidences bad faith because Respondent is exploiting the identity and reputation of Complainant to gain revenue or exploit victims.

Complainant's Enterprise Cybersecurity Department ("ECD") conducted an analysis on the Domain Name on August 29, 2023. Information obtained from the US Department of Homeland Security's Cybersecurity Infrastructure Security Agency led ECD to investigate. Complainant's Information Technology Infrastructure Operations Assurance Department's Security Operations Center then conducted an analysis on the Domain Name on September 12, 2023. The Internet Protocol (IP) addresses associated with the Domain Name are attributed by security researchers to be from a known espionage actor.

Complainant maintains Respondent has also used the Domain Name in bad faith by "parking" the website. Use of seemingly benign parking site constitutes bad faith use because such parking sites function solely from the confusion with a legitimate website. Complainant suggests that the Panel may properly infer that Respondent was aware of the existence of Complainant because the agency plays a significant role in pensions in the United States and because it is an agency of the United States Government. Though Respondent might claim ignorance of a United States Government agency because Respondent is abroad, Complainant suggests that this would be a hollow claim where a respondent "parks" a domain name that leads Internet users to competitors of the complainant.

Respondent also acted in bad faith because Respondent likely registered the Domain Name to prevent Complainant from registering the Domain Name. Prior panels have held that registering a domain name and holding it to prevent a trademark owner from registering it constitutes bad faith and circumstantial evidence supports such a finding. Respondent's registration of an almost identical Domain Name suggests that Respondent intended to prevent Complainant from registering its rightful name in a different gTLD. Moreover, there is no evidence that Respondent intends to legitimately develop the parked page to which the Domain Name resolves.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

In order to succeed on its Complaint, Complainant must demonstrate that the three elements set forth in paragraph 4(a) of the Policy have been satisfied. Those elements are as follows:

- (i) the Domain Name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) Respondent has registered and is using the Domain Name in bad faith.

### A. Identical or Confusingly Similar

Based on the record, the Panel finds that Complainant has demonstrated it has common law rights in its PBGC mark for purposes of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.3; see also *Government of Canada v. David Bedford a.k.a. DomainBaron.com*, WIPO Case No. [D2001-0470](#) (panel finds names of government departments, agencies and programs, although not protected as such under the Policy, may nevertheless qualify for protection if they are shown to be used as trademarks). Complainant has shown that the PBGC mark has become a distinctive identifier associated with Complainant and its services, as it has been used continuously by Complainant since its creation in 1974.

Moreover, the Panel finds that the Domain Name is confusingly similar to Complainant's mark for the purposes of the Policy. In particular, the Domain Name adds the word "my" to the acronym "pba", which itself is confusingly similar to Complainant's PBGC mark. The term "my" means "relating to or belonging to me". "My" is commonly used as a prefix appended to another word or term to indicate (to consumers) a personalized access or connection to a product or service designated by the second term. Thus, the acronym "mypba" is read or interpreted to refer to "my PBA", where the acronym "pba" is a mnemonic for "pension benefit access". Complainant maintains a website titled "MyPBA", located at "<https://login.mypba.pbgc.gov>", which is used for processing employee retirement benefits. The Panel determines that the overall facts and circumstances of this case support a finding of confusing similarity. See [WIPO Overview 3.0](#), section 1.7 ("In this context, panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant.")

Accordingly, 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 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.

Here, having reviewed the available record, the Panel finds that Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name, while Respondent has not provided a Response and therefore has failed to rebut this showing. The record indicates Complainant has

not given Respondent license to use its PBGC trademark and Respondent has not registered a similar mark for its own business or identity. Respondent is not a corporation or entity commonly known as “PBGC” or “mypba”, nor commonly known by a name or title that is represented by this or similar acronym (such as the specific letters in the Domain Name). Moreover, Respondent does not presently use the Domain Name to offer goods or services, nor is there any indication of legitimate noncommercial or fair use.

Accordingly, based on the available record, the Panel finds the second element of the Policy has been established.

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

The third element of paragraph 4(a) of the Policy requires that Complainant demonstrate that Respondent registered and is using the Domain Name in bad faith. [WIPO Overview 3.0](#), section 3.1, states “bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark”. 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.

Based on the record in the present case, the Panel finds that Respondent has registered the Domain Name in bad faith and used it to intentionally attempt to attract Internet users, for commercial gain or other nefarious purposes, by creating a likelihood of confusion with Complainant’s mark and services. As noted above, the Domain Name is confusingly similar to Complainant’s PBGC mark, which Complainant has used for over 30 years, as well as to Complainant’s domain name <pbgc.gov>, which was registered in 1997. Given Complainant’s long-standing and continuous use of its distinctive PBGC mark, the Panel infers that Respondent was likely aware of Complainant and its mark when registering the Domain Name. Respondent has failed to provide a response to explain why it otherwise chose to register the Domain Name. The Domain Name resolves to a website displaying pay-per-click links, which are related to retirement services. Meanwhile, Complainant provides importance services while using its PBGC mark, covering the pensions of approximately 44 million workers. Moreover, Complainant maintains a publicly available website used for processing employee retirement benefits, which is titled “MyPBA” and located at “https://login.mypba.pbgc.gov”. Complainant has noted the potential for confusion between Respondent and Complainant’s websites is exacerbated by the fact that many users seeking Complainant’s site are elderly retirees, who may lack familiarity with the Internet. Further, Complainant has provided evidence, as noted above, that the IP addresses associated with the Domain Name have been attributed to a known espionage actor. In the face of Complainant’s allegations, Respondent has failed to submit a Response.

Accordingly, based on the available record, the Panel finds that 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 Domain Name <mypba.org> be transferred to Complainant.

*/Christopher S. Gibson/*

**Christopher S. Gibson**

Sole Panelist

Date: February 11, 2024