

ADMINISTRATIVE PANEL DECISION

Pension Benefit Guaranty Corporation (PBGC) v. Desiree Pigford,
Fat Narcissist, Inc.

Case No. D2023-5300

1. The Parties

Complainant is Pension Benefit Guaranty Corporation (PBGC), United States of America (“United States”), represented by William Black, United States.

Respondent is Desiree Pigford, Fat Narcissist, Inc., United States.

2. The Domain Name and Registrar

The disputed domain name <pbgc.agency> (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 December 20, 2023. On December 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 17, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 18, 2024.

The Center appointed Robert A. Badgley as the sole panelist in this matter on January 22, 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

According to the Complaint:

“Complainant in this administrative proceeding is the Pension Benefit Guaranty Corporation (PBGC), 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). [...] The PBGC 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 the PBGC at the lowest level consistent with carrying out its obligations[...]. The primary mission of the PBGC is to guarantee defined benefit pensions for retirees of insolvent companies with under-funded pension plans.”

According to Complainant, it covers the pensions of approximately 35 million workers in the United States.

Complainant does not hold a registered trademark for PBGC, but asserts common law rights in PBGC through extensive use of PBGC as a source identifier for Complainant’s services. Since 1975, Complainant has used “PBGC” to refer to itself, including in its insignia and on numerous official documents. Complainant also operates its main website at the domain name <pbgc.gov>.

The Domain Name was registered on May 16, 2023. As of September 12, 2023, the Domain Name resolved to a parking page containing hyperlinks, “401k Retirement Plan”, “Retirement Plan”, and “401k Plan”. According to Complainant: “Respondent is profiting by hosting a domain name for a website that’s confusingly similar to websites operated under Complainant’s domain name, exploiting the appearance of Complainant’s credibility or identity to deceive Internet users.” Complainant alleges further that Respondent’s site “has clickbait links related to financial management and 401k investments”.

5. Parties’ Contentions

A. Complainant

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

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

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

A. Identical or Confusingly Similar

As noted above, Complainant does not hold a registered trademark for PBGC, but asserts common law rights in PBGC through extensive use as a source identifier for Complainant's services such that PBGC has acquired secondary meaning among consumers as a mark identifying Complainant's services. The Panel accepts this argument.

In order to establish rights in an unregistered or "common law" trademark, a complainant must show that the name has become a distinctive identifier associated with the complainant or its goods and services. Relevant evidence of such 'secondary meaning' includes length and amount of sales under the mark, the nature and extent of advertising, consumer surveys and media recognition. The fact that the secondary meaning may only exist in a small geographic area does not limit complainant's rights in a common law trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Question, Third Edition ("[WIPO Overview 3.0](#)"), section 1.3.

In *Government of Canada v. David Bedford a.k.a. DomainBaron.com*, WIPO Case No. [D2001-0470](#), the panel held that "names of Government Departments, agencies and programs, although not protected as such under the Policy, may nevertheless qualify for protection under the Policy if they are shown to be trademarks".

The same may hold true for acronyms or abbreviations. The extensive and continuous reference to an organization by its acronym may suffice to gain the status of a common law trademark. See *National Football League Players Association, Inc. v. Cayman Trademark Trust d/b/a Trademark*, WIPO Case No. [D2005-0234](#) (finding that extensive and continuous use of an acronym is sufficient to identify and distinguish its particular services from those of any competitor).

The record shows that, since 1975, Complainant has used PBGC extensively as a source identifier, including in its insignia. Complainant also operates its main website at the domain name <pbgc.gov>. The Panel finds that Complainant holds unregistered rights in the common law mark PBGC for purposes of this UDRP proceeding.

Moreover, prior UDRP panels have recognized that Complainant enjoys common law rights in the unregistered mark PBGC. See, , *Pension Benefit Guaranty Corporation v. John Smith*, WIPO Case No. [D2008-1370](#) ("the Panel 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 trade mark rights for the purposes of the Policy").

The Panel also concludes that the Domain Name is identical to Complainant's PBGC mark.

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or

- (iii) you [Respondent] are making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward to dispute Complainant's allegations or articulate some bona fide basis for registering the Domain Name. On the undisputed record and considering the use of the Domain Name to resolve to a parked page with pay-per-click ("PPC") links, the Panel concludes that Respondent targeted Complainant's mark to generate revenue through consumer confusion between the Domain Name and Complainant's mark. Such a use of the Domain Name is clearly illegitimate. [WIPO Overview 3.0](#), section 2.9.

Furthermore, the composition of the Domain Name, compromised by the Complainant's mark and the generic Top-Level Domain ("gTLD") ".agency", which is directly associated with Complainant, supports a finding that Respondent obtained the Domain Name to take advantage of Complainant's mark. [WIPO Overview 3.0](#), section 2.14.1.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates here its discussion above in the "Rights or Legitimate Interests" section. The Panel finds, on this undisputed record and on a balance of probabilities, that Respondent, more likely than not, had Complainant and its PBGC mark in mind when registering the Domain Name. The fact that Complainant is a government agency, that the Domain Name has the gTLD ".agency", and given that the links displayed in the Domain Name were all associated with Complainant's services reinforces this conclusion.

The Panel also concludes that Respondent's use of the Domain Name for a parked page with PPC links related to Complainant's services, falls within the above-quoted Policy, paragraph 4(b)(iv), and hence constitutes bad faith registration and use of the Domain Name.

Complainant has established Policy, paragraph 4(a)(iii).

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 <pbgc.agency> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: January 29, 2024