DISPUTE RESOLUTION SERVICE

D00020512

Decision of Independent Expert

PepsiCo, Inc.

and

PEPSICO FINANCE EUROPE LIMITED

1. The Parties:

Complainant: PepsiCo, Inc.
700 Anderson Hill Road
Purchase
New York
10577
United States

Respondent: PEPSICO FINANCE EUROPE LIMITED
21 Holborn Viaduct
London
EC1A 2DY
United Kingdom

2. The Domain Name:

<pepsicofinanceltd.co.uk>

3. Procedural History:

16 August 2018 14:54 Dispute received
20 August 2018 15:32 Complaint validated
20 August 2018 15:42 Notification of complaint sent to parties
07 September 2018 02:30 Response reminder sent
12 September 2018 12:45 No Response Received

17 September 2018 10:56 Notification of no response sent to parties
17 September 2018 11:08 Expert decision payment received

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of such a nature as to call into question my independence in the eyes of either of the parties.

4. Factual Background

The Complainant is a United States Corporation, which heads a substantial international group of companies. The Complainant is best known for its PEPSI range of soft drinks, but is engaged in a wide variety of commercial activities.

The Complainant is the registered proprietor of a large number of trade mark registration for marks comprising or including the word PEPSI ("the PEPSI trade marks"). For present purposes it is only necessary to mention one of those registrations, although the annexes to the Complaint feature over 300 pages detailing the PEPSI trade marks. Among those registrations is United Kingdom registration No. 00000978461 PEPSI (word) dated 29 July, 1971 in Class 32 for non-alcoholic drinks and preparations for making such drinks, all containing cola extract and included in Class 32.

A member company of the Complainant's Group of companies is Bendler Investment II Ltd of the same address as the Respondent, which prior to a name change on 13 February 2018 was named Pepsico Finance Europe Limited i.e., as will be seen below, identical to the false name adopted by the Respondent on registration of the Domain Name.

The Domain Name was registered on 3 December, 2017 and is connected to a website claiming to be a financial services website of Pepsico Finance Europe Limited of the same address as the subsidiary company of the Complainant identified in the previous paragraph and previously named Pepsico Finance Europe Limited.

5. Parties' Contentions

The Complainant contends that its PEPSI trade marks and its Pepsico trading name are similar to the Domain Name. It further contends that the Domain Name is an Abusive Registration in that it was registered to impersonate the Complainant and/or a subsidiary company in the Complainant's group of companies and was registered with fraudulent intent.

The Respondent has not responded to the Complaint.

6. Discussions and Findings

<u>General</u>

Pursuant to paragraph 2 of the Policy for the Complainant to succeed in this Complaint it must prove to the Expert on the balance of probabilities that:

2.1.1 It has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

2.1.2 The Domain Name, in the hands of the Respondent, is an Abusive Registration

"Abusive Registration" is defined in paragraph 1 of the Policy as a domain name which either:

i. was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or

ii. is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

Rights

The Expert is satisfied that the Complainant's PEPSI trade marks are similar to the Domain Name.

Abusive Registration

The Expert accepts the Complainant's contention that it has no connection with the Respondent or the website to which the Domain Name points and has given the Respondent no permission to use any of the PEPSI trade marks.

What was the Respondent's purpose in registering the Domain Name? The Complainant contends that the Respondent's purpose was fraudulent, its intention being to impersonate the Complainant and/or one of its subsidiaries and to defraud Internet users. The Respondent has not responded to the Complaint.

While the Complainant states that "it has recently come to Pepsico's attention that people believe that they have been defrauded by an entity holding itself out as PepsiCo Finance Europe", there is nothing before the Export to support that statement. It is a bare assertion.

Nonetheless, the Complaint and its annexes provide ample evidence to support the contention that that was the Respondent's intention and the Expert believes it to be more than likely that the Respondent's use of the Domain Name has led to deception. When the Domain Name was registered the Complainant had a subsidiary named "Pepsico Finance Europe Limited" with a registered office at the same address as that appearing above as the address of the Respondent. Furthermore, the Domain Name was and remains connected to a website of a business claiming to be a financial services company named "Pepsico Finance Europe". There is nothing in either the Domain Name

or the website to which it is connected to distinguish it from the Complainant and/or its subsidiaries.

The Expert is satisfied on the evidence before it (and in the absence of any Response from the Respondent) that the Domain Name was registered in a manner which, at the time when the registration took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; and has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights.

7. Decision

I direct that the Domain Name be transferred to the Complainant.

Signed: **Dated: 19 September 2018**

Tony Willoughby