

ADMINISTRATIVE PANEL DECISION

Tetra Laval Holdings & Finance S.A v. Abel Tina
Case No. D2022-4926

1. The Parties

The Complainant is Tetra Laval Holdings & Finance S.A, Switzerland, represented by Aera A/S, Denmark.

The Respondent is Abel Tina, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <tetrapackau.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 23, 2022, the Registrar transmitted by email to the Center its verification response confirming that the 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 the Respondent of the Complaint, and the proceedings commenced on December 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 19, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on January 26, 2023. 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

The Complainant is a Swiss corporation part of the Tetra Laval Group. The Tetra Laval Group consists of three independent industry groups, one of which is Tetra Pak. The Tetra Pak Group is a multinational food processing and packaging company founded in 1947 in Sweden. It employs more than 25,000 people and operates in more than 160 countries.

The Complainant is the owner of more than 1,500 registrations for the TETRA PAK trademark in over 160 countries worldwide. Among these, the Complainant is the owner of the following trademarks:

- TETRA PAK, Swedish registration No. 71196, registered in 1951, for goods in classes 6, 7, 16, 17, 20 and 21;
- TETRA PAK, European Union Trade Mark registration No. 1202522, registered in 2000, for goods and services in classes 6, 7, 9, 11, 16, 17, 20, 21, 29, 30, 32, 33 and 37;
- TETRA PAK, International trademark registration No. 1146433, registered in 2012, for goods and services in classes 7, 11, 16, 29, 30, 32, 33, 37 and 42;
- TETRA PAK, United States registration No. 586,480, registered in 1954, for goods in class 16;
- TETRA PAK, United States registration No. 580,219, registered in 1953, for goods in class 7.

The Complainant is also the owner of more than 300 domain names containing the trademark TETRA PAK around the world.

The disputed domain name was registered on November 8, 2022 and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

According to the Complainant, the disputed domain name is confusingly similar to the Complainant's trademark as it consists of a deliberate misspelling of said trademark followed by the "au" suffix, which is the abbreviation of Australia. The addition of the letter "c" in the word "tetrapack" in the disputed domain name, represents a common misspelling of the Complainant's mark, since "pack" refers to the word package, which is part of the Complainant's activities. This misspelling is hardly noticeable. Minor misspellings do not create a new or different mark in which the Respondent's has rights. Moreover, the association of the Complainant's mark with the suffix "au" in the disputed domain name cannot prevent a finding of confusing similarity since the Complainant's mark is recognizable within the disputed domain name.

In the opinion of the Complainant, the Respondent lacks rights or legitimate interests in the disputed domain name, as it is not affiliated with, nor related to, the Complainant. The Complainant did not license or otherwise authorize the Respondent to use its trademark in any manner whatsoever. Moreover, the Complainant maintains that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, that it is not generally known by the disputed domain name, and that it has not acquired trademarks or service marks for "tetra pak", or "tetra pack". Finally, although the disputed domain name does not resolve to an active website, it has a history of malicious use.

In respect of bad faith, the Complainant argues that the Respondent has intentionally registered and used the disputed domain name in bad faith. It is apparent from the composition of the disputed domain name and the wide reputation of the Complainant's trademark that the Respondent must have known the Complainant's TETRA PAK mark and its business when it registered the disputed domain name. The Respondent could not have chosen or subsequently used the disputed domain name for any other reason

than to trade-off the goodwill and reputation of the Complainant's trademark, or otherwise create a false association, sponsorship or endorsement with the Complainant. Moreover, the malicious use of the disputed domain name is not likely due to a mere coincidence. The disputed domain name was registered with a deliberate intent to create the impression of an association with the Complainant and to induce Internet users to believe that the Complainant has approved the use, or is the registrant of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the Complainant owns registered rights over the TETRA PAK mark, which predate the date of registration of the disputed domain name. The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's mark. The disputed domain name incorporates the Complainant's TETRA PAK mark with one minor misspelling that consists in the addition of the letter "c" before the letter "k" in the word "pak". This slight difference does prevent a finding of confusing similarity since the Complainant's trademark is still recognizable within the disputed domain name. As regards the addition of the suffix "au", it is an abbreviation of "Australia". Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms, including geographical indications, such as the suffix "au", cannot prevent a finding of confusing similarity under the first element (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)")).

In light of the above, the Panel is satisfied that the first condition under the Policy is met.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. As such, where a complainant makes a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. In the instant case, the Complainant did not license its trademark to the Respondent, nor authorized the Respondent to incorporate its trademark or a very similar one in a domain name. The Respondent is not affiliated with the Complainant, nor has a business or other kind of relationship with it. Nothing in the case file shows that the Respondent is commonly known by the disputed domain name.

At the time of the filing of the Complaint, the disputed domain name did not lead to an active website and there is no evidence in the file of demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Rather, the Complainant has shown that eleven security vendors flagged the IP address connected with the disputed domain name as malicious. In accordance to the general powers conferred to the Panel under paragraph 10 of the Rules, this Panel has checked whether the disputed domain name led to a website or other online location. In doing so, the Panel was faced with a blocking notice as the URL "https://www.tetrapackau.com/" is classified as an "hacking" URL. All these circumstances, along with the fact that the disputed domain name is an intentional misspelling of the Complainant's trademark (which by itself may suggest lack of legitimacy), makes it hard for the Panel to conceive any rights or legitimate interests that the Respondent could have in the disputed domain name. Thus, in the absence of any reply from the Respondent, the Panel finds that the Complainant has made a *prima facie* case of the Respondent's lacks of rights or legitimate interests in the disputed domain name.

As such, the Panel is satisfied that also the second condition under the Policy is met.

C. Registered and Used in Bad Faith

To succeed under the Policy, a complainant must show that a domain name has been both registered and is being used in bad faith.

In relation to registration in bad faith, the Panel agrees with the Complainant that the Respondent was aware of the Complainant's trademark and of its business when it registered the disputed domain name. The TETRA PAK mark is highly distinctive and enjoys substantial reputation. This trademark is uniquely associated to the Complainant and the Respondent's registration of a domain name including a common misspelling of the Complainant's well-known trademark cannot have happened coincidentally. UDRP panels have consistently found that the incorporation of a typosquatted version of a well-known trademark into a domain name by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

As far as use in bad faith is concerned, the Panel notes that passive holding of a domain name does not prevent a finding of bad faith when certain circumstances occur. Previous UDRP panels have identified factors that have been deemed relevant to assess bad faith in case of passive holding doctrine, such as: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

As mentioned above, in the instant case, the Complainant's trademark is highly distinctive and well known. Given the high distinctive character and reputation of the Complainant's trademark, and the Respondent's lack of rights or legitimate interests, it is highly unlikely that the Respondent could make a legitimate use of the disputed domain name. Furthermore, the Respondent did not submit any argument in reply to the Complaint that could support a finding of actual or contemplated good-faith use. Rather, the Complainant showed that the disputed domain name is associated with some kind of malicious use and the limited investigations of the Panel in accordance to the powers granted under paragraph 10 of the Rules have confirmed this circumstance.

For all the reasons mentioned above, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

Hence, also the third and last condition under the Policy is to be considered as met.

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 <tetrapackau.com> be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: February 9, 2023