

ADMINISTRATIVE PANEL DECISION

Plastipak Packaging Inc. v. Nguyễn Văn Lư
Case No. D2023-3373

1. The Parties

The Complainant is Plastipak Packaging Inc., United States of America (“United States” or “U.S.”), represented by ZeroFox, United States.

The Respondent is Nguyễn Văn Lư, Viet Nam.

2. The Domain Name and Registrar

The Disputed Domain Name <plastikpak.com> is registered with April Sea Information Technology Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2023. On August 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 10, 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 (Redacted For Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 25, 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 amendment to the Complaint on September 21, 2023.

On August 25, 2023, the Center transmitted an email communication to the Parties in both English and Vietnamese regarding the language of the proceeding. On August 29, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint, together with the amendment to 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, both in English and Vietnamese, and the proceedings commenced on September 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 17, 2023.

The Center appointed Pham Nghiem Xuan Bac as the sole panelist in this matter on October 24, 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 U.S.-based company that specializes in designing and manufacturing plastic containers for various products, including beverages, household cleaning goods, food items, industrial and automotive products, and personal care products.

The Complainant is the registered owner of several trademarks that consist of or contain the word "PLASTIPAK" (the "PLASTIPAK trademarks") in many jurisdictions around the world, including, but not limited to the United States trademark registration No. 1318186 for PLASTIPAK PACKAGING, registered on February 5, 1985, the United States trademark registration No. 3552420 for PLASTIPAK, registered on December 30, 2008, the International Trademark Registration No. 973091 for PLASTIPAK, registered on March 20, 2008.

Additionally, the Complainant is the registrant of the domain name <plastipak.com> registered on February 18, 1996, which features the PLASTIPAK trademarks.

The Disputed Domain Name was registered on May 23, 2006. As of the date of this Decision, the Disputed Domain Name resolves to a parking page containing pay-per-click ("PPC") links to various third parties' contents, including those associated with plastic molding and packaging services.

5. Parties' Contentions

A. Complainant

The Complainant contends that each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case, as follows:

- (i) The Disputed Domain Name is identical or confusingly similar to a trademark or service mark, in which the Complainant has rights.

First, the Complainant contends that it has rights in and to the PLASTIPAK trademarks in many jurisdictions.

Second, the Complainant submits that the Disputed Domain Name is confusingly similar to its PLASTIPAK trademarks since the Disputed Domain Name includes the full term "PLASTIPAK" with the addition of the letter "k" to make the word "plastikpak". The Complainant argues that this change to its trademarks does not prevent a finding of confusing similarity.

- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

First, the Complainant asserts that there is no evidence that the Respondent is using or preparing to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services or making a legitimate noncommercial or fair use of the Disputed Domain Name. Instead, the Respondent's use of the Disputed Domain Name to park and host PPC ads.

Second, the Complainant contends that there is no evidence showing that the Respondent has been commonly known by Disputed Domain Name.

(iii) The Disputed Domain Name was registered and is being used in bad faith.

First, the Complainant argues that the Respondent registered the Disputed Domain Name with a similar trademark to the Complainant and failed to distinguish it adequately.

Second, the Complainant submits that the Disputed Domain Name is intentionally registered and used to confuse consumers with the Complainant's trademarks, exploit common typos for profit, or sell the Disputed Domain Name, which suggests bad faith.

In addition, the Complainant contends that the Respondent is using a privacy service to conceal their registration and contact information, which is a further indication of bad faith.

With the said arguments, the Complainant requests that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

A. Procedural Issues

(I) Language of the Proceeding

The Complaint was filed in English. However, the Registrar confirmed that the language of the Registration Agreement is Vietnamese.

As the Complaint was filed in English, the Center, in its notification dated August 25, 2023, invited the Complainant to submit either (i) satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceeding should be in English, or (ii) the Complaint translated into Vietnamese, or (iii) a substantiated request for English to be the language of the proceeding.

On August 29, 2023, the Complainant submitted to the Center its request that English be the language of the proceeding. The Respondent did not give any comment on this issue.

According to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Similar to previous UDRP decisions, the Panel finds that the spirit of paragraph 11(a) is to ensure fairness in the selection of language by giving full consideration to the Parties' level of comfortability with each language, the expenses to be incurred, and the possibility of delay in the proceeding in the event translations are required and other relevant factors (see, e.g., *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. [D2003-0679](#)).

In the present case, the Panel takes into account the circumstances of the proceeding, including, but not limited to:

- (i) the fact that the Complainant, an American entity, does not appear to be able to communicate in Vietnamese, and therefore, if the Complainant was required to have the documents translated into Vietnamese, the proceeding would be unduly delayed, and the Complainant would have to incur substantial expenses for translation;
- (ii) the English language is quite popular in Viet Nam, where the Respondent resides, and the website under the Disputed Domain Name contains English content, such as “plastic molding service”, “packaging”, and “job posting”. These suggest that the Respondent has knowledge of the English language and would be able to communicate in English;
- (iii) the Respondent did not object to English being the language of the proceeding and did not submit a Response in either English or Vietnamese.

Therefore, for easy comprehension of the Complainant (ultimately, the Party solely taking part in the proceeding) of the Panel’s decision without any necessity of translations, and in the interest of fairness to both Parties as well as the Panel’s obligation under paragraph 10(c) of the Rules, which provides that “the Panel shall ensure that the administrative proceeding takes place with due expedition”, the Panel hereby decides, under paragraph 11(a) of the Rules, that the language of the proceeding shall be English and shall render its decision in English.

(II) The Respondent’s Identity

The Panel notes that at the time the Complaint was filed on August 7, 2023, the Respondent was identified as “REDACTED FOR PRIVACY”. On August 10, 2023, the Registrar transmitted by email to the Center, disclosing the underlying registrant as ‘Nguyễn Văn Lư’ in their verification response to the request of the Center. The Center sent an email communication to the Complainant on August 25, 2023, providing the information disclosed by the Registrar and inviting the Complainant to submit an amendment to the Complaint. On September 21, 2023, the Complainant transmitted an email to the Center, affirmatively replying that the Complainant did not wish to make substantive amendments to the Complaint but did wish to add the above mentioned registrar-provided registrant information, namely ‘Nguyễn Văn Lư’ as the underlying registrant to the Complaint. The Panel will treat ‘Nguyễn Văn Lư’ as the Respondent for purposes of this proceeding.

(III) Delay in bringing the Complaint

The Panel finds that the Disputed Domain Name was registered on May 23, 2006, but the Complaint was not filed with the Center until August 7, 2023. In considering this delay of over 16 years in challenging the Respondent’s registration of the Disputed Domain Name, the Panel is of the same view as those in previous UDRP decisions mentioned in section 4.17 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), which held that “panels have widely recognized that mere delay between the registration of a domain name and the filing of a complaint neither bars a complainant from filing such case, nor from potentially prevailing on the merits”. However, similar to previous decisions, the Panel has taken into account this delay when considering the second and third elements requiring the Complainant to establish that the Respondent lacks rights or legitimate interests and that the Respondent has registered and used the Disputed Domain Name in bad faith (see, e.g., *CeltonManx Limited v. Pham Dinh Nhut*, WIPO Case No. [D2014-0109](#)).

(IV) The Respondent's Failure to Respond

The Respondent's failure to file a Response does not automatically result in a decision in favor of the Complainant (see, e.g., *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. [D2010-1413](#), and *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). However, the Panel may draw appropriate inferences from the Respondent's default.

B. Identical or Confusingly Similar

The Complainant is required to establish the two following elements: (i) that it has trademark rights, and, if so, (ii) that the Disputed Domain Name is identical or confusingly similar to its trademark.

First, the Panel is satisfied that the Complainant had registered trademark rights to PLASTIPAK before the Disputed Domain Name was registered.

Second, the Disputed Domain Name incorporates the entirety of the Complainant's exclusive PLASTIPAK trademarks. The sole difference between the Disputed Domain Name and the Complainant's trademarks is the insertion of the letter "k" in the middle of the Disputed Domain Name. Under section 1.9 of the [WIPO Overview 3.0](#), a domain name that consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Thus, the mere inclusion of this additional letter does not negate a finding of confusing similarity between the Disputed Domain Name and the PLASTIPAK trademarks. In the Panel's assessment, "plastikpak" is confusingly similar to the Complainant's PLASTIPAK trademarks in terms of structure, presentation, and pronunciation.

In addition, this is a typical case of a deliberate misspelling of a trademark (so-called "typosquatting"), by omitting, adding, or substituting the order of letters of a trademark, where numerous UDRP panels in the past have found a confusing similarity to be present (see, e.g., *Airlinen Ltd v. Deyan Dimitrov, Laundryheap, VenturePoint Ltd*, WIPO Case No. [D2019-2542](#); *Mirova v. WhoisGuard Protected, WhoisGuard, Inc. / Brian Tranter*, WIPO Case No. [D2020-0142](#)).

Third, the Panel finds, similarly to other UDRP panels, that the generic Top-Level Domain, in this case, ".com", is disregarded as it is a technical requirement (see section 1.11.1 of the [WIPO Overview 3.0](#)).

Based on the foregoing findings, the Panel finds that the Disputed Domain Name is confusingly similar to the PLASTIPAK trademarks, and paragraph 4(a)(i) of the Policy is established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists circumstances, in particular, but without limitation, which, if found by the Panel to be proved, demonstrate the Respondent's rights or legitimate interests in the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy, including:

- "(i) before any notice to you 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 (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 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 finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute them.

The consensus of previous UDRP decisions is that while the overall burden of proof in UDRP proceedings is on the complainant, once a *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating its rights or legitimate interests in the Disputed Domain Name (see section 2.1 of the [WIPO Overview 3.0](#)). In the present case, the Respondent failed to make such a demonstration.

Regarding paragraph 4(c)(i) of the Policy, the Panel finds, in light of the Complainant's asserted facts, that no license, permission, or authorization of any kind to use the Complainant's trademark has been granted to the Respondent. No evidence has been provided to demonstrate that the Respondent possesses registered or unregistered trademark rights in any jurisdiction associated with either the PLASTIPAK trademarks or the Disputed Domain Name. Thus, the Panel is satisfied that the Respondent lacks any rights pertaining to the PLASTIPAK trademarks.

The Complainant presented evidence that the Disputed Domain Name directs users to a parked page containing PPC links that redirect them to other websites. As of the Decision date, upon accessing the website under the Disputed Domain Name, the Panel corroborates that some of the PPC links thereon are referring to, among others, services that are competing with the Complainant. In light of these findings, the Panel upholds that operating the PPC parking page using a trademark, which links to products or services in direct competition with the trademark owner, does not establish a *bona fide* offering of goods or services (see section 2.9 of the [WIPO Overview 3.0](#)).

Regarding paragraph 4(c)(ii) of the Policy, the Panel finds no evidence indicating that, despite the considerable time since its registration, the Respondent has been commonly known by the Disputed Domain Name. This finding is supported by the absence of any proof demonstrating that the Respondent conducts any *bona fide* business or organization under the Disputed Domain Name, aside from using it to direct to the parked page featuring sponsored PPC links to third-party content. Therefore, it is not evidenced that the Respondent is identified by "plastikpak" or that it has any rights in it.

Regarding paragraph 4(c)(iii) of the Policy, the Panel finds no evidence of the Respondent making any noncommercial or fair use of the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests regarding the Disputed Domain Name, and the second element, paragraph 4(a)(ii) of the Policy, is established.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular, but without limitation, four circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith, including:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location."

The above four circumstances are not exhaustive, and the Panel may find bad faith alternatively.

The Panel finds that the Complainant has put forth evidence that the Respondent has registered and used the Disputed Domain Name in bad faith. The Respondent did not reply to the Complainant's contentions and, therefore, did not refute the Complainant's contentions.

The Panel has considered the Complainant's assertions and evidence concerning the Respondent's bad faith registration and use of the Disputed Domain Name. In this regard, the Panel finds that the Complainant's PLASTIPAK trademarks are registered in multiple jurisdictions globally and have gained a significant reputation in the plastic container sector in many countries. The Disputed Domain Name was registered decades after the Complainant's initial trademark registration and around 10 years after the registration of the Complainant's <plastipak.com> domain name.

Further, the Disputed Domain Name incorporates the Complainant's PLASTIPAK trademarks entirely, differing only by the insertion of the letter "k" in the middle of the Disputed Domain Name. The Disputed Domain Name is also almost identical to the Complainant's domain name <plastipak.com>, including the gTLD suffix ".com". Since "plastipak" has no dictionary meaning in English and the Complainant extensively uses the PLASTIPAK trademarks in various countries, the Panel finds it is improbable that the Respondent registered the Disputed Domain Name without prior knowledge of the Complainant and its trademarks. Instead, given that the Disputed Domain Name leads to a parked page with PPC links referring to the Complainant's competitors, it is likely that the Respondent knew about the Complainant and its PLASTIPAK trademarks before registration. From this finding, the Panel considers such registration as an attempt by the Respondent to benefit from typographical errors by Internet users searching for the Complainant (see section 3.2.1 of the [WIPO Overview 3.0](#)).

Moreover, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. In the Panel's view, registration of a domain name, in which a respondent has no rights or legitimate interests coupled with no credible explanation for the respondent's choice of the domain name, may be considered bad faith.

On the date of this Decision, the Panel accesses the Disputed Domain Name and finds that it is resolving to the PPC parking page, where some of the PPC links refer to the services of the Complainant's competitor. With all these facts and findings, the Panel opines that by using the Disputed Domain Name in this manner, the Respondent has intentionally attempted to attract Internet users to its website and generate income from such PPC links by creating a likelihood of confusion with the Complainant's PLASTIPAK trademarks as to the source, sponsorship, affiliation or endorsement of its website on its website, which is indicative of bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

In addition, the Panel finds that the bad faith registration and use of the Disputed Domain Name is also affirmed by the Respondent's pattern of conduct. In fact, the Respondent, Nguyễn Văn Lữ, is a serial cybersquatter who was involved in a pattern of several cybersquatting cases of domain name disputes, namely, *Thi Factory S.A. v. Vietnam Domain Privacy Services, Nguyễn Văn Lữ*, WIPO Case No. [D2019-2596](#); *Squarespace, Inc. v. April Sea Information Technology Company Ltd. / Nguyễn Văn Lữ*, WIPO Case No. [D2019-3064](#); *Skyscanner Limited v. Nguyễn Văn Lữ*, WIPO Case No. [D2020-0672](#); *xHamster IP Holdings Ltd v. Nguyễn Văn Lữ*, WIPO Case No. [D2020-3163](#); *CenterPoint Energy, Inc. v. Nguyễn Văn Lữ*, WIPO Case No. [D2020-3300](#); *Hillsong Church Inc. v. Nguyễn Văn Lữ*, WIPO Case No. [D2021-0368](#); *National Collegiate Athletic Association v. Nguyễn Văn Lữ*, WIPO Case No. [D2021-4050](#); *Equifax Inc. v. Nguyễn Văn Lữ*, WIPO Case No. [D2022-2750](#).

Taking into account all of the above, the Panel finds that the Disputed Domain Name was registered and is being used by the Respondent in bad faith under paragraph 4(b) of the Policy, and the third element under paragraph 4(a) of the Policy is established.

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, <plastikpak.com>, be transferred to the Complainant.

/Pham Nghiem Xuan Bac/

Pham Nghiem Xuan Bac

Sole Panelist

Date: November 7, 2023