

ADMINISTRATIVE PANEL DECISION

Tetra Laval Holdings & Finance S.A. v. Trupper Mexico
Case No. D2022-3711

1. The Parties

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

The Respondent is Trupper Mexico, Mexico.

2. The Domain Name and Registrar

The disputed domain name <tetrapakqro.com> is registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 5, 2022. On October 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 5, 2022, 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 (Whols Agent (654468183), Whois Privacy Protection Service, Inc.) and contact information in the Complaint. The Center sent an email communication to Complainant on October 6, 2022 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 October 7, 2022.

The Center verified that the Complaint together with the 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 October 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 31, 2022.

The Center appointed Fernando Triana, Esq., as the sole panelist in this matter on November 2, 2022. 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 a multinational food processing and packing company founded in 1947, being the world leader in developing, producing and selling of equipment and processing plants for making, packing and distributing food, with presence in over 160 countries including the United States of America (“United States”) and Mexico.

Complainant owns the trademark TETRA PAK in over 160 countries with over 1500 registrations, including Swedish trademark registration No. 71196 since 1951 and United States trademark registration No. 586480 since 1954, among others.

The disputed domain name was registered on September 29, 2022. The disputed domain name resolved to a website which promotes and sells cars and displays Complainant’s trademarks. At the time of this decision, the disputed domain name does not resolve to an active website.

5. Parties’ Contentions

A. Complainant

Complainant is a multinational food processing and packing company founded in 1947, being the world leader in developing, producing and selling of equipment and processing plants for making, packing and distributing food, with presence in over 160 countries including the United States and Mexico.

Complainant owns the trademark TETRA PAK in over 160 countries with over 1500 registrations, including Swedish trademark registration No. 71196 since 1951, United States trademark registration No. 586480 since 1954, among others.

Complainant owns over 300 domain names including the trademark TETRA PAK.

Previous UDRP panels have recognized the well-known character of the trademark TETRA PAK.

The disputed domain name is confusingly similar with the trademarks in which Complainant has rights.

The disputed domain name incorporates the trademark TETRA PAK in its entirety with the addition of the abbreviation of the state of Querétaro, México.

Respondent has no rights or legitimate interests in the disputed domain name.

Respondent is not affiliated or related to Complainant.

Complainant has neither licensed nor authorized Respondent to use the trademark TETRA PAK.

Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services.

Respondent is not generally known by the disputed domain name and has not acquired any trademark or service mark rights in that name or mark.

Respondent knew of Complainant’s rights as is using Complainant’s trademarks within the resolving website.

Respondent is not making any legitimate noncommercial or fair use of the disputed domain name.

Respondent is intentionally diverting consumers for commercial gain.

The disputed domain name has been registered and is being used in bad faith as Respondent is intentionally attempting to attract, for commercial gain, internet users to the websites and/or other online locations, by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation or endorsement.

The disputed domain name is confusingly similar to Complainant's well-known trademarks.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Likewise, paragraph 10(d) of the Rules, provides that "the Panel shall determine the admissibility, relevance, materiality and weight of the evidence".

The Panel wishes to place special emphasis on the evidence filed to prove assertions, which has been thoroughly studied in order to determine its relevance and weight in arriving at a decision. The statements that have been accompanied by evidence have been given more importance than the mere unsubstantiated assertions.

Paragraph 4(a) of the Policy requires that Complainant prove each of the following three elements to obtain an order that the disputed domain name be cancelled or transferred:

- (1) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (3) the disputed domain name has been registered and is being used in bad faith.

This discussion, based on the evidentiary support submitted by Complainant, noting that Respondent did not reply to Complainant's contentions, will be discussed as follows:

First of all, the Panel will determine whether or not the disputed domain name is identical or confusingly similar to the trademark in which Complainant has rights. Secondly, the Panel will verify if Respondent has any rights or legitimate interests in respect of the disputed domain name; and thirdly, the Panel will establish whether or not the disputed domain name has been registered and is being used in bad faith by Respondent.

A. Identical or Confusingly Similar

Complainant owns the trademark TETRA PAK in over 160 countries with over 1500 registrations, including Swedish trademark registration No. 71196 since 1951 and United States trademark registration No. 586480 since 1954, among others.

a) Existence of a trademark or service mark in which Complainant has rights

Firstly, it is important to point out that paragraph 4(a) of the Policy requires the existence of a trademark or a service mark.

When a sign is registered as a trademark, it is surrounded by a presumption of sufficient distinctiveness, and the owner is granted with an exclusive right over the mark, which entitles him to prevent any third party from using the registered sign or any other sign confusingly similar to it.

In this case, Complainant proved its rights in the trademarks TETRA PAK in Sweden with registration No. 71196 since 1951, and in the United States with trademark registration No. 586480 since 1954, among many others.

This information appears to be incontestable and conclusive evidence of Complainant's ownership of the cited trademark and the exclusive right to use them in connection with the stated services. The registration of a mark is *prima facie* evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive.

Thus, Complainant established its rights in the TETRA PAK.

Therefore, the Panel concludes that Complainant has demonstrated rights in the TETRA PAK for purposes of paragraph 4(a)(i) of the Policy.

b) Identity or confusing similarity between the disputed domain name and Complainant's trademark

Complainant alleges that the disputed domain name incorporates the TETRA PAK, adding the letters "qro" which is the abbreviation of Querétaro.

On the first place, before establishing whether or not the disputed domain name is confusingly similar to Complainant's TETRA PAK, the Panel wants to point out that the addition of a gTLD, *i.e.*, ".com," ".biz," ".edu," ".org," or ".net", as in the case, is generally disregarded when determining if the disputed domain name is identical or confusingly similar to the trademark, see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) at section 1.11.1.

Hence, the inclusion of the ".com" gTLD, in the disputed domain name is not a factor in analyzing whether a disputed domain name is identical or confusingly similar to the mark in which Complainant asserts rights.

Furthermore, the Panel considers that the reproduction of the TETRA PAK, in the disputed domain name, is sufficient ground to establish that the disputed domain name is confusingly similar to the trademark. Especially since the disputed domain name reproduces entirely Complainant's trademarks which is clearly recognizable in the disputed domain name.

In addition, the Panel agrees with Complainant on the conclusion that including the letters "qro" is not sufficient to prevent a finding of confusing similarity between the disputed domain name and the TETRA PAK.

In consequence, as per this reasoning, the Panel finds that, the disputed domain name is confusingly similar to Complainant's trademarks and thus, the requirement set forth in paragraph 4(a)(i) of the Policy is duly complied with.

B. Rights or Legitimate Interests

a) *Prima facie* case

Regarding this second element of paragraph 4(a) of the Policy, UDRP panels have unanimously found that requiring Complainant to prove the lack of rights or legitimate interests of Respondent in the disputed domain name is often an impossible task: it is not only a negative but also demands access to information that is mostly within the knowledge of Respondent¹.

In *Julian Barnes v. Old Barn Studios Ltd.*, WIPO Case No. [D2001-0121](#), the panel stated that:

“Is the Respondent required to adduce any such evidence, if the onus is on the Complainant to prove the three elements of paragraph 4 of the Policy? While the overall burden of proof is on the Complainant, this element involves the Complainant proving matters, which are peculiarly within the knowledge of the Respondent. It involves the Complainant in the often impossible task of proving a negative. In the Panel’s view the correct approach is as follows: the Complainant makes the allegation and puts forward what he can in support (e.g. he has rights to the name, the Respondent has no rights to the name of which he is aware, he has not given any permission to the Respondent). Unless the allegation is manifestly misconceived, the Respondent has a case to answer and that is where paragraph 4(c) of the Policy comes in. If the Respondent then fails to demonstrate his rights or legitimate interests in respect of the Domain Name, the complaint succeeds under this head”.

Therefore, Complainant is required to make a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Once this *prima facie* case is made, the burden of production shifts to Respondent, who must come forward with concrete evidence of its rights or legitimate interests². If Respondent fails to do so, Complainant is deemed to have met the second element of paragraph 4(a) of the Policy.

Complainant asserts that Respondent has no rights or legitimate interests in the disputed domain name because of the following: i) Respondent is not affiliated or related to Complainant; ii) Complainant has neither licensed nor authorized Respondent to use the trademark TETRA PAK; iii) Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services; iv) Respondent is not generally known by the disputed domain name and has not acquired any trademark or service mark rights in that name or mark; and v) Respondent knew of Complainant’s rights as is using Complainant’s trademarks within the resolving website.

The Panel accepts these assertions as a *prima facie* case made by Complainant that shifts the burden of production to Respondent.

b) Respondent’s rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy includes a non-limited listing of circumstances that serve to prove Respondent’s rights or legitimate interests in a disputed domain name:

(i) before any notice of the dispute, Respondent’s 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) Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

¹ See *Arla Foods amba v. Bel Arbor / Domain Admin, PrivacyProtect.org*, WIPO Case No. [D2012-0875](#); see also *F. Hoffmann-La Roche AG v. Bargin Register, Inc. - Client Servs.*, WIPO Case No. [D2012-0474](#).

² See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

(iii) Respondent is 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.

Respondent did not file any Response, thus, failed to rebut Complainant's *prima facie* case, and to show his rights or legitimate interests in the disputed domain name. Hence, as per paragraph 14 of the Rules, the Panel shall draw such inferences therefrom as it considers appropriate:

- Respondent's use of the disputed domain name is not in connection with a *bona fide* offering of goods or services, as it uses a third party's trademarks to divert consumers to third parties' sites. Consequently, Respondent's use is directed to capitalize Complainant's TETRA PAK goodwill by attracting Internet users to its disputed domain name.
- There is no evidence within the file proving that Respondent is commonly known by the disputed domain name.
- There is no evidence within the file proving that Complainant licensed or otherwise permitted any use by Respondent of its trademarks.
- There is no evidence within the file justifying the choice of the TETRA PAK to create the disputed domain name for a *bona fide* purpose.
- There is no evidence within the file proving Respondent's rights over the TETRA PAK anywhere in the world.
- The disputed domain name is confusingly similar to the trademark TETRA PAK. The nature of the disputed domain name creates a risk of implied affiliation or association with Complainant (section 2.5.1 of the [WIPO Overview 3.0](#)).
- There is evidence within the file proving that Respondent was making use of the disputed domain name, with the intention of commercial gain by misleadingly divert consumers.

The Panel thus concludes that Respondent lacks rights and legitimate interests in the disputed domain name.

Therefore, the second requirement of paragraph 4(b) of the Policy is met.

C. Registered and Used in Bad Faith

According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a 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 Respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) 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) Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) By using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to his/her website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his/her website or location or of a product or service on his/her website or location.

For the Panel, it is evident that Respondent knew of the existence and importance of Complainant's trademarks when registering the disputed domain name. It is not a coincidence to include a trademark within a domain name, when it does not correspond to a common word in English or other language. Thus, the Panel finds Respondent deliberately took someone else's trademark to register a domain name and to create a business around it.

In addition, Complainant contends in the Complaint that Respondent is using the disputed domain name in bad faith, since the disputed domain name resolves to a website which promotes and sells cars and displays Complainant's trademarks. Thus, Respondent chose Complainant's trademark in order to generate traffic to its website.

The Panel finds that Respondent must have known that including Complainant's trademark within the disputed domain name would attract Internet users seeking Complainant, to the website from which they expected to make financial gain. Thus, Respondent intentionally attempted to attract Internet users by creating a likelihood of confusion with Complainant's trademarks.

For the Panel it is evident that Respondent knew of the existence and importance of Complainant's trademarks when registering the disputed domain name. It is not a coincidence to include a well-known trademark within a domain name. Thus, the Panel finds Respondent deliberately took Complainant's trademark to register a domain name and to create a business around it. Indeed, TETRA PAK is a well-known and famous trademark as has been established before:

"Accordingly, in view of the well-known status of the TETRA PAK trademark and Complainant's world-wide business including Mexico, Respondent was more likely than not aware of Complainant's trademarks"³.

These facts are enough to conclude that Respondent registered the disputed domain name to disrupt Complainant's business and to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement.

Therefore, the three elements of the Policy 4(a)(iii) are satisfied in the present case in respect to Respondent of the disputed domain names.

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 <tetrapakqro.com> be transferred to Complainant.

/Fernando Triana, Esq./

Fernando Triana, Esq.

Sole Panelist

Date: November 16, 2022

³ *Tetra Laval Holdings & Finances S.A. v. Whols Agent, Whols Privacy Protection Service, Inc. / Trupper Mexico*, Wipo Case No. [D2022-2490](#).