

ADMINISTRATIVE PANEL DECISION

Tetra Laval Holdings & Finance S.A. v. Ricardo Lopez Ortega
Case No. D2022-4037

1. The Parties

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

The Respondent is Ricardo Lopez Ortega, Colombia.

2. The Domain Name and Registrar

The disputed domain name <tetrapakmexico.com> is registered with Launchpad.com Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 27, 2022. On October 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 28, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 31, 2022, 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 amended Complaint on November 4, 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 the Respondent of the Complaint, and the proceedings commenced on November 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 2, 2022.

The Center appointed Mladen Vukmir as the sole panelist in this matter on December 8, 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

The Panel has determined the following non-contested facts:

(i) The Complainant is Tetra Laval Holdings & Finance S.A., a corporation organized and existing under the laws of Switzerland, and is a part of the Tetra Laval Group;

(ii) The Tetra Laval Group develops, markets and sells equipment for processing, packaging and distribution of food products;

(iii) The Complainant is the holder of a number of TETRA PAK registered trademarks (hereinafter: "TETRA PAK trademarks"), including but not limited to:

Trademark	Scope of protection	Reg. no. / Status	Date of registration	Class(es)
TETRA PAK (word)	International	1146433 /registered	November 6, 2012	7, 11, 16, 29, 30, 32, 33, 37, and 42
TETRA PAK (word)	European Union	001202522 /registered	October 2, 2000	6, 7, 9, 11, 16, 17, 20, 21, 29, 30, 32, 33, and 37
TETRA PAK (word)	United States of America	586480/ registered	March 9, 1954	2
TETRA PAK (word)	Mexico	71183/ registered	September 17, 1952	6, 16, and 21
TETRA PAK (word)	Sweden	71196/ registered	December 14, 1951	6, 7, 16, 17, 20, and 21

(iv) The Complainant holds numerous domain names corresponding to or containing its registered TETRA PAK trademarks, including <tetrapak.com>, <tetrapak.mx>, and <tetrapak.org>.

(v) The Complainant's TETRA PAK trademarks were recognized in previous UDRP cases and accepted by previous UDRP Panels as well-known trademarks, such as: *Tetra Laval Holdings & Finance S.A. v. Whols Agent, Whols Privacy Protection Service, Inc. / Trupper Mexico* WIPO Case No. [D2022-2490](#), *Tetra Laval Holdings & Finance S.A. v. WhoisGuard Protected, WhoisGuard, Inc. / Zetao Wang*, WIPO Case No. [D2021-0559](#) etc;

(vi) The disputed domain name was registered on October 18, 2022, and resolves to a website purporting to offer cars for sale, while displaying the TETRA PAK trademark in the picture of each car displayed on the website;

(vii) The Respondent is the holder of the disputed domain name, as disclosed by the Registrar.

5. Parties' Contentions

A. Complainant

The Complainant, essentially, asserts the following:

(i) it is a Swiss corporation whose related entity, the Tetra Pak Group, is a well-known multinational food processing and packaging company that develops, markets and sells equipment for processing, packaging and distribution of food products. The Tetra Pak Group employs more than 25,000 people and is operative in more than 160 countries worldwide, including the US and Mexico;

(ii) it holds a number of trademark registrations that consist of terms “tetra” and “pak” (TETRA PAK trademarks) that enjoy protection in numerous different countries;

(iii) the previous UDRP Panels have recognized that TETRA PAK trademarks are distinctive, heavily advertised and well-known. The Complainant invokes earlier UDRP Panel decisions in this regard;

(iv) by virtue of its long use, fame and well-know character of TETRA PAK trademarks, latter trademarks are associated exclusively with the Complainant and its licensee Tetra Pak;

(v) the Respondent’s domain name is confusingly similar to the Complainant’s TETRA PAK trademarks. The aforementioned is due to the fact that the disputed domain name incorporates the entirety of the well-known, registered, TETRA PAK trademarks, followed by a geographical term reflecting Mexico. Linking of a trademark with a geographical designation does not distinguish the disputed domain name from the trademark. Thus, there is a lack of distinguishing factors between the disputed domain name and the TETRA PAK trademarks in which the Complainant has rights;

(vi) the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has a continuous and long prior use of its TETRA PAK trademarks, and is in no way affiliated or related to the Respondent. The Respondent is not licensed or otherwise authorized to use TETRA PAK trademarks, the Respondent could not have been ignorant of the rights held by the Complainant, due to the Complainant’s aforementioned continuous and long prior use of the TETRA PAK trademarks. The Respondent’s business and the unauthorized use of TETRA PAK trademarks shows that the Respondent is well aware of the Complainant and its trademarks. The Respondent is intentionally diverting consumers for its own commercial gain.

(vii) the disputed domain name was registered and is being used in bad faith, as the Respondent could not have chosen or subsequently used term “tetrapak” in combination with the geographical term “Mexico” for any reason other than to trade-off the goodwill and reputation of the Complainant’s TETRA PAK trademarks, or create a false association with the Complainant. Even a cursory Internet search at the time of the disputed domain name registration, would have made it clear to the Respondent of the existence of the Complainant’s TETRA PAK trademarks. The well-known status of the Complainant’s TETRA PAK trademarks and the Complainant’s world-wide business, including the one in Mexico, shows that the Respondent was more likely than not aware of the Complainant’s rights.

B. Respondent

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

6. Discussion and Findings

The Panel now proceeds to consider this matter on the merits in light of the Complaint, the lack of the Response, the Policy, the Rules, the Supplemental Rules, and other applicable legal authority pursuant to paragraph 15(a) of the Rules.

Paragraph 4(a) of the Policy provides that the Complainant must prove, with respect to the disputed domain name, each of the following:

(i) the disputed domain name is confusingly similar to a trademark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

As provided in section 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter: "[WIPO Overview 3.0](#)"), it is generally accepted that ownership of a registered trademark by a complainant is sufficient to satisfy the threshold requirement of having the trademark rights for purposes of standing to file a UDRP case.

The Complainant has submitted sufficient evidence to show that it is the holder of a number of TETRA PAK trademarks registered before the competent authorities worldwide. As such, these trademarks provide to the Complainant all the exclusive rights that are granted with such trademark registrations.

It is well established that the threshold test for confusing similarity under the UDRP involves a reasoned but relatively straightforward comparison between the textual components of the relevant trademark and the disputed domain name. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see section 1.7 of the [WIPO Overview 3.0](#)).

After performing a side-by-side comparison of the disputed domain name and the Complainant's TETRA PAK trademarks, it is evident to this Panel that the disputed domain name incorporates the Complainant's TETRA PAK trademarks in its entirety. The only difference between the disputed domain name and the Complainant's TETRA PAK trademarks is the addition of the geographical term "Mexico" in the disputed domain name.

Prior UDRP Panels have found confusing similarity in a number of cases based on the circumstances involving domain names comprised of a well-known trademark and a descriptive or geographical term (section 1.8. of [WIPO Overview 3.0](#)). Where the trademark in question is recognizable within the disputed domain name, the addition of other terms (whether geographical, descriptive, etc.) does not prevent a finding of confusing similarity between the disputed domain name and trademark in question. In this particular case, added term "Mexico" is a geographical term, and following earlier UDRP panels decisions, it does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's TETRA PAK trademarks.

Regarding the generic Top-Level Domain ("gTLD"), ".com" suffix in the disputed domain name, as a standard registration requirement, should be disregarded under the confusing similarity test (section 1.11 of [WIPO Overview 3.0](#)).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's TETRA PAK trademarks under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out a number of circumstances which, without limitation, may be effective for the Respondent to demonstrate that it has the rights to, or legitimate interests in, the disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy. Those circumstances are:

"(i) Before any notice to [the respondent] of the dispute, [use by the respondent] of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) [Where the respondent] (as an individual, business, or other organization) [has] been commonly known by the domain name, even if [the respondent has] acquired no trademark or service mark rights; or

(iii) [Where the 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.”

As noted by the previous UDRP panels on the onus of proof under paragraph 4(a)(ii) of the Policy, and as summarized in section 2.1 of the [WIPO Overview 3.0](#): “[...] While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

In the present case, the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, with the Respondent failing to provide any substantive response to the Complaint which would prove his rights or legitimate interests in the disputed domain name.

Namely, the Complainant has established that it is the holder of a number of TETRA PAK trademarks in various jurisdictions, as well as that it has used the same trademarks widely on the market. The Complainant filed sufficient evidence proving extensive and long lasting use of its TETRA PAK trademarks and their well-known character.

The Panel observes that there is neither any relation, disclosed to the Panel, nor otherwise apparent from the records, between the Respondent and the Complainant, nor does it arise that the Complainant has ever licensed or otherwise permitted the Respondent to use its TETRA PAK trademarks or to apply for or use any domain name incorporating the same trademarks.

Furthermore, there is no evidence that the Respondent has been commonly known by the disputed domain name. Also, there is no evidence in the case file or otherwise apparent to the Panel that the Respondent has been using 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.

The Respondent has failed to provide any substantive reply to the Complaint and accordingly failed to rebut the Complainant’s *prima facie* showing that the Respondent has no rights or legitimate interests in the disputed domain name.

As there is no evidence that the Respondent is in any way permitted by the Complainant to use TETRA PAK trademarks, nor is there any evidence that the Respondent has made any *bona fide*, fair or otherwise legitimate use of the disputed domain name, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name, which includes the Complainant’s TETRA PAK trademarks.

Thus, the Respondent’s use of the Complainant’s TETRA PAK trademarks in regards to the sale of cars carries a risk of implied affiliation with the Complainant (see section 2.5.1. of [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the requirements set forth in paragraph 4(a)(ii) of the Policy have been fulfilled by the Complainant’s making the *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and by the Respondent’s failing to produce any arguments or evidence to the contrary.

C. Registered and Used in Bad Faith

For the purpose of paragraph 4(a)(iii) 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 the disputed domain name in bad faith:

(i) circumstances indicating that the holder has registered or has 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 the holder's documented out-of-pocket costs directly related to the domain name; or

(ii) the holder 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 the holder has engaged in a pattern of such conduct; or

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

(iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's 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 the holder's website or location or of a product or service on the holder's website or location.

The Panel accepts that the Complainant's arguments have been substantiated on the basis that the Respondent has registered and used the disputed domain name in bad faith. The Complainant has filed sufficient evidence to prove that its TETRA PAK trademarks are well-known, that the Complainant has a worldwide reputation, and that it is highly unlikely that the Respondent was unaware of the Complainant and its trademarks when it registered the disputed domain name. The Respondent, on the other hand, did not provide any evidence that he has rights and/or legitimate interests in a disputed domain name, nor did he present a credible evidence for registering and using the disputed domain name.

Further, previous UDRP panels have found that the incorporation of a well-known trademark in a domain name having no plausible explanation for doing so is in itself an indication of bad faith (see *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)). Bad faith is further substantiated given the fact that the Respondent displayed the Complainant's well-known, registered TETRA PAK trademarks on the picture of each car presented on the website created under the disputed domain name. Such display of the Complainant's TETRA PAK trademarks on the Respondent's website points to the fact that the Respondent was well aware of the Complainant and its TETRA PAK trademarks and was hence intentionally attracting consumers to the Respondent's webpage for commercial gain.

Considering all the facts and circumstances, this Panel's view is that the Complainant's TETRA PAK trademarks are well-known and distinctive. The Respondent registered the disputed domain name based on the goodwill and reputation of the Complainant's TETRA PAK trademarks, in order to drive traffic to the Respondent's website, where the Respondent offers cars for sale, with each car photo displaying TETRA PAK trademark. It is more likely than not that the Respondent's motive in relation to the registration and use of the disputed domain name was to take advantage from the Complainant's well-known trademark rights.

Having in mind recent UDRP decisions (see *Tetra Laval Holdings & Finances S.A. v. Whols Agent, Whols Privacy Protection Service, Inc. / Trupper Mexico*, WIPO Case No. [D2022-2490](#)), it is clear to the Panel that there has been a practice of using the Complainant's well-known TETRA PAK trademarks to create an impression of an association and/or affiliation with the Complainant for the purpose of the sale of goods (cars).

Given the above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith, and that the Complainant has fulfilled the third element under paragraph 4(a)(iii) of the Policy.

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 <tetrapakmexico.com> be transferred to the Complainant.

/Mladen Vukmir/

Mladen Vukmir

Sole Panelist

Date: December 29, 2022