

## **ADMINISTRATIVE PANEL DECISION**

CANPACK S.A. v. Paul Cameron

Case No. D2025-0266

### **1. The Parties**

The Complainant is CANPACK S.A., Poland, represented by Kancelaria Prawno-Patentowa Magdalena Krekora, Poland.

The Respondent is Paul Cameron, Australia.

### **2. The Domain Name and Registrar**

The disputed domain name <canpackmachinery.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 January 23, 2025. On January 23, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 23, 2025, 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 (Can Pack Machinery Pty Ltd / Whois Agent (165672863), Whois Privacy Protection Service, Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 28, 2025, 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 January 30, 2025.

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, and the proceedings commenced on February 3, 2025. In accordance with the Rules, paragraph 5, the due date for Response was February 23, 2025. The Respondent did not submit a Response within the due date. Accordingly, the Center notified the Respondent’s default on February 24, 2025. The Respondent then sent two informal email communications to the Center on February 24 and 25, 2025.

The Center appointed Assen Alexiev as the sole panelist in this matter on February 27, 2025. 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 was founded in 1992 and was formerly known as CAN-PACK S.A. Together with its subsidiaries, it produces beverage and food cans and metal closures for food and industrial packaging and provides related services. The Complainant's group currently employs over 9,000 people in 22 plants located in 14 countries around the world.

The Complainant is the owner of a number of trademark registrations for "CANPACK" or "CAN-PACK" (for ease of reference, the "CANPACK trademark"), including the following registrations:

- the European Union Trade Mark CAN-PACK with registration No. 004936803, registered on June 5, 2010 for goods and services in International Classes 1, 6, 16, 17, 20, 21, 29, 32, 35, 37, 39, 40, and 42;
- the European Union Trade Mark CANPACK with registration No. 016865289, registered on December 14, 2017 for goods and services in International Classes 6 and 42;
- the United States trademark CANPACK with registration No. 7495562, registered on September 3, 2024 for goods and services in International Classes 6, 37, and 42; and
- the International trademark registration CANPACK with registration No. 1517142, registered on January 10, 2020 for goods and services in International Classes 6 and 42, registered in a number of jurisdictions, including Australia, where the Respondent is located.

The Respondent was director, secretary, and member of the Australian company Can Pack Machinery Solutions Pty Ltd. According to the information provided by the Complainant of the current and historical company extract at the Australian Securities & Investments Commission, this company was established on January 16, 2019, and on June 13, 2024, the Supreme Court of Western Australia issued a winding-up order and appointed a liquidator of the company.

The disputed domain name was registered on February 14, 2015. It currently resolves to a parking webpage. At the time of filing of the Complaint, it resolved to the website of the Respondent's company with the title "CanPackMachinery". The earliest archived copy of this website at the Wayback Machine is dated January 28, 2018.<sup>1</sup> The "About us" section of the same website described its provider in the following terms:

"CanPackMachinery is an Australian Family owned and run business where we buy, supply, refurbish and commission new and used processing and packaging machinery with over 20 years of experience in the industry. We also provide full consulting services to ensure you are purchasing the appropriate machinery for your business. We specialise in Flow Wrappers, Piston Fillers and Sachet Packers for all your packaging needs."

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

---

<sup>1</sup>Noting the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, panels may undertake limited factual research into matters of public record if they would consider such information useful to assessing the case merits and reaching a decision. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 4.8.

The Complainant states that it has continuously used the CANPACK trademark in the European Union and around the world since 1992, as a result of which this trademark has become well-known and recognizable by their customers as being associated with the Complainant and its business.

The Complainant maintains that the disputed domain name misleads customers and causes confusion due to the fact that the Respondent is not the Complainant's distributor and has no relationship with the Complainant. The Complainant states that it was not aware of the Respondent's existence until it was informed about it through local entrepreneurs in Australia in 2023. The Complainant notes that it sent the Respondent a letter requesting the signing of a co-existence agreement, but the Respondent did not respond.

The Complainant states that the disputed domain name is confusingly similar to its CANPACK trademark, because it incorporates this trademark in its entirety together with the dictionary word "machinery", which relates to the services provided by the Respondent. According to the Complainant, the addition of this word does not reduce the confusing similarity of the disputed domain name with the Complainant's trademark, and it will confuse Internet users into believing that it was registered by or is officially affiliated with the Complainant. The Complainant maintains that consumers and in particular the Complainant's customers, vendors and other stakeholders are likely to get a wrong impression that the website at the disputed domain name must be the Complainant's official website for the services related to the design of packaging machines, or that it is endorsed or authorized by the Complainant. In the Complainant's submission, the inclusion of the word "machinery" contributes to the confusion, as the Complainant is a supplier of empty cans in many markets including Australia, and provides services and repairs of packaging machinery.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it first began using the CANPACK trademark in 1992, and that the same trademark has been used in Australia at least since 2013, where the Complainant made sales to its main customer on a monthly basis. The Complainant points out that the Respondent registered the disputed domain name over 22 years after the CANPACK trademark was first used and more than 20 years after the Complainant's longest-standing trademark was registered. The Complainant states that it has not consented to or otherwise authorized the Respondent's use of the CANPACK trademark, and notes that on December 8, 2023 it sent a demand letter to the Respondent and its business demanding that the Respondent sign a co-existence agreement, but the Respondent never replied to this letter, failed to comply with this demand, and still uses the CANPACK trademark in relation to its business. The Complainant adds that the Respondent's business name "CAN PACK MACHINERY SOLUTIONS" has been registered in Australia since August 17, 2017, and that the Respondent has never operated outside Australia, while the Complainant has operated there since 2013, although the earliest registration for its trademark in Australia dates back to the year 2020.

The Complainant notes that the disputed domain name was registered after the Complainant started using its trademark in Australia, and maintains that the Respondent's company name registration which is limited to Australia cannot justify the registration and use of the disputed domain name under the ".com" generic Top-Level Domain ("gTLD"). The Complainant adds that the Respondent has no trademarks registered in Australia or in any other country, and notes that since the Respondent is repairing and selling packing machines, this may mislead customers about its alleged official role in the Complainant's group and create the false impression that it is a subsidiary of the Complainant in Australia. The Complainant submits that the Respondent is not commonly known by the disputed domain name in Australia or elsewhere, and maintains that it has no trademarks corresponding to the disputed domain name. According to the Complainant, the sole registration of the company name "Can Pack Machinery Solutions" cannot justify the use of the CANPACK trademark by the Respondent including through the registration and use of the disputed domain name. The Complainant notes that the disputed domain name leads to a website that may be perceived by the customers as informing of the fact that the Respondent is an official subsidiary of the Complainant or is somehow endorsed or sponsored by the Complainant. The Complainant states that the Respondent is not an authorized distributor, reseller, or partner of the Complainant and is not affiliated to or endorsed by the Complainant in any way. According to the Complainant, the Respondent was aware of the Complainant and the CANPACK trademark, and is using the disputed domain name to unfairly take advantage of the

confusing similarity between this trademark and the disputed domain name. The Complainant adds that it has never authorized the Respondent to use its CANPACK trademark in the disputed domain name or otherwise.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the disputed domain name does not reflect or correspond to the name of the Respondent or of its company. The Complainant maintains that, due to the confusing similarity between the disputed domain name and the CANPACK trademark, and the fact that the Respondent as a company specializing in repairing and selling packing machines, the Respondent must have been aware of the Complainant and its CANPACK trademark. According to the Complainant, it is reasonable to infer that the disputed domain name was registered to mislead and confuse Internet users into believing that the disputed domain name is associated with the Complainant and its CANPACK trademark in order to increase the number of Internet users that access the website at the disputed domain name for commercial gain.

## **B. Respondent**

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

In its two informal emails to the Center of February 24 and 25, 2025, the Respondent stated that its company was wound up in 2024 and that there is no company at present.

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of the CANPACK trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the CANPACK trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the CANPACK trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "machinery") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the CANPACK trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

### **B. Rights or Legitimate Interests**

The Panel finds that the Respondent, through the related company Can Pack Machinery Solutions Pty Ltd., has been commonly known by a name corresponding to the disputed domain name <canpackmachinery.com>.

As discussed in [WIPO Overview 3.0](#), section 2.3, for a respondent to demonstrate that it (as an individual, business, or other organization) has been commonly known by the domain name or a name corresponding to the domain name, it is not necessary for the respondent to have acquired corresponding trademark or service mark rights. The respondent must however be "commonly known" (as opposed to merely incidentally being known) by the relevant moniker (e.g., a personal name, nickname, corporate identifier), apart from the

domain name. Such rights, where legitimately held/obtained, would prima facie support a finding of rights or legitimate interests under the UDRP. Insofar as a respondent's being commonly known by a domain name would give rise to a legitimate interest under the Policy, panels will carefully consider whether a respondent's claim to be commonly known by the domain name – independent of the domain name – is legitimate. Mere assertions that a respondent is commonly known by the domain name will not suffice; respondents are expected to produce concrete credible evidence.

Absent genuine trademark or service mark rights, evidence showing that a respondent is commonly known by the domain name may include: a birth certificate, driver's license, or other government-issued ID; independent and sustained examples of secondary material such as websites or blogs, news articles, correspondence with independent third parties; sports or hobby club publications referring to the respondent being commonly known by the relevant name; bills/invoices; or articles of incorporation. Panels will additionally typically assess whether there is a general lack of other indicia of cybersquatting.

The disputed domain name was registered in 2015. The Respondent is the owner and director of the Australian company Can Pack Machinery Solutions Pty Ltd., which was registered in 2019 with a name that corresponds to the disputed domain name, and prior to the notice of the dispute, the disputed domain name had continuously been used for the official website of this company. This website prominently discloses the name and contact details of the Respondent's company and describes it in a manner that does not create a likelihood of confusion with or impersonate the Complainant.

As submitted by the Complainant, in December 2023 it sent to this company a letter whereby it acknowledged "[the Respondent's] business which is operated under the entity named 'CANPACK Machinery Solutions' in the Australian market and using [www.canpackmachinery.com](http://www.canpackmachinery.com) website to promote its services," and made the following proposal: "For the above reasons and in view to avoid time-consuming legal proceedings and in the spirit of a mutually beneficial resolution, we propose a concurrent use arrangement such that your company would not use the logo 'CANPACK' with any metal packaging, including cans and subject to your confirmation of that commitment we will not challenge your using of 'CANPACK' as part of your commercial name 'CANPACK Machinery Solutions'. I enclose a draft of the Trademark Coexistence Agreement." This proposal shows that the Complainant acknowledged the existence of the Respondent's company and was prepared to enter into a contractual relationship with it.

The Complainant's CANPACK trademark was registered in Australia in 2020, which is one year after the Respondent established its company there. The Complainant alleges having continuously used its CANPACK trademark in Australia since 2013, but the only supporting documents that it has submitted refer to a single transaction in December 2013, whereby the Complainant's Indian affiliate sold 16 pallets of "J & B 300ml cans, SMIRNOFF ZERO 300ml cans, and plain silver 300ml cans" to a company in Australia. The only mention of "CANPACK" in these documents is in the business name of the Complainant's affiliate. The Complainant has not provided any other evidence of its activities prior to 2020 in Australia or in any other part of the world. The documents submitted by the Complainant are not sufficient to justify a conclusion that the Complainant has made such use of its CANPACK trademark in Australia (or anywhere else) prior to 2020 that the Respondent is more likely than not to have been aware of this trademark when it registered the disputed domain name and its company.

Taking all the above into consideration, and in the absence of any indicia of cybersquatting, the Panel finds no basis for a finding that the Respondent's registration and subsequent operation of the disputed domain name and of its company have somehow targeted the Complainant or its CANPACK trademark or are somehow illegitimate. It rather appears that the Respondent has independently and legitimately registered and operated them in furtherance of its own business. The fact that the Respondent's company is currently in liquidation does not affect the above conclusion.

The Panel therefore finds that the Complainant has not established that the Respondent does not have rights or legitimate interests in the disputed domain name. For this reason, the second element of the Policy has not been established.

### **C. Registered and Used in Bad Faith**

The evidence in the case file as presented does not indicate that the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark.

As discussed in the previous section on rights and legitimate interests, the evidence submitted by the Complainant does not support a conclusion that the Respondent must have been aware of the Complainant and its CANPACK trademark when it registered the disputed domain name and its company, both of which happened prior to 2020, when the Complainant registered its CANPACK trademark in Australia. The Respondent's website prominently described the business of its company and included its contact details and its content did not show any signs of targeting of the Complainant or of its trademark. It appears as more likely than not that the Respondent independently registered and used the disputed domain name in connection to the business of the company whose name corresponds to the disputed domain name.

In view of the above, the Panel finds that the Complainant has failed to establish that the disputed domain name was registered and is being used in bad faith. Therefore, the third element of the Policy has not been established.

### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Assen Alexiev/*

**Assen Alexiev**

Sole Panelist

Date: March 13, 2025