

## **ADMINISTRATIVE PANEL DECISION**

Tetra Laval Holdings & Finance S.A. v. Jerald Jerry  
Case No. D2022-4566

### **1. The Parties**

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

The Respondent is Jerald Jerry, United States of America.

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

The disputed domain name <tetrapakau.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 November 30, 2022. On December 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 2, 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. On December 14, 2022, the Complainant submitted the missing annex to the Complaint.

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 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 9, 2023.

The Center appointed 陈长杰 Jacob (Changjie) Chen as the sole panelist in this matter on January 16, 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, founded in 1947 in Sweden, is a multinational food processing and packaging company that develops, markets and sells equipment for processing, packaging and distribution of food products. The Complainant claims to operate in over 160 countries and employ more than 25,000 people worldwide and is a world-leading company in development, production and sale of equipment and processing plants for making, packaging and distributing foods and accessories.

The Complainant holds numerous registrations of TETRA PAK trademark, including No. 71196 Swedish trademark, registered on December 14, 1951; No. 71183 Mexican trademark, registered on September 17, 1952; No. 586480 United States of America trademark, registered on March 9, 1954; No. 001202522 European Union trademark, registered on October 2, 2000; No. 1146433 International trademark, registered on November 6, 2012.

The Complainant also owns numerous domain names incorporating its TETRA PAK trademark, including <tetrapack.com>.

According to the information disclosed by the Registrar, the Respondent is Jerald Jerry, located in the United States of America.

The disputed domain name was registered on October 31, 2022 and resolves to an inactive website.

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

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

The Complainant contends that the disputed domain name is confusingly similar to its TETRA PAK trademark. The disputed domain name entirely incorporates the TETRA PAK trademark with the addition of letters "au". The additional letters "au" does not distinguish the disputed domain name from the Complainant's trademark. The generic Top-Level Domain ("gTLD") ".com" is disregarded under the first element confusing similarity test. Thus, the disputed domain name is confusingly similar to the TETRA PAK trademark.

The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no relationship with the Complainant, and the Complainant has not licensed or otherwise permitted the Respondent to use the TETRA PAK trademark or to register a domain name incorporating this trademark. Furthermore, the Respondent is not using the disputed domain in connection with making a *bona fide* offering of goods or services. The disputed domain name does not resolve to an active website, but according to an analysis software, the IP address connected with the disputed domain name has a history of malicious use. In addition, the Respondent is not commonly known by the disputed domain name and has not acquired any trademark or service mark rights corresponding to the disputed domain name.

The Complainant finally contends that the disputed domain name was registered and is being used in bad faith. The TETRA PAK trademark has gained a reputation under the Complainant's continuous use and operation, and the Respondent should have been aware of the trademark when registering the disputed domain name. Furthermore, the Respondent registered the disputed domain name with a deliberate intent to create an impression of an association with the Complainant. The similarity between the disputed domain name and the Complainant's TETRA PAK trademark will aggravate the potential confusion.

##### **B. Respondent**

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The Complainant owns rights upon numerous registrations of TETRA PAK trademark. The Complainant has successfully established its rights to the TETRA PAK trademark.

It is well established that the gTLD, in this case “.com”, as a standard registration requirement is disregarded in the assessment of the confusing similarity between the disputed domain name and the Complainant’s trademark.

The disputed domain name incorporates the Complainant’s TETRA PAK trademark in its entirety. Previous UDRP decisions have established that if a complainant’s trademark is recognizable within a domain name that is sufficient to establish that the domain name is identical or confusingly similar to the complainant’s trademark. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The additional letters “au” after the TETRA PAK trademark does not prevent a finding of confusing similarity between the disputed domain name and the TETRA PAK trademark. See section 1.8 of the [WIPO Overview 3.0](#).

Thus, the Panel concludes that the disputed domain name is confusingly similar to the TETRA PAK trademark.

Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

### B. Rights or Legitimate Interests

The Complainant has submitted evidence to prove its rights to the TETRA PAK trademark. The Respondent does not have connections with the Complainant and is not licensed or permitted by the Complainant to use the TETRA PAK trademark or to register a domain name which incorporates this trademark. Furthermore, the Respondent is not commonly known by the disputed domain name.

The Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name, and the burden of production shifts to the Respondent. See *International Hospitality Management - IHM S.p.A. v. Enrico Callegari Ecostudio*, WIPO Case No. [D2002-0683](#). However, in this case, the Respondent has failed to come forward with any evidence giving rise to rights or legitimate interests in respect of the disputed domain name.

The disputed domain name currently resolves to an inactive website. Without any evidence from the Respondent, there is no element from which the Panel could infer the Respondent’s rights or legitimate interests over the disputed domain name.

In addition, the nature of the disputed domain name, comprising the TETRA PAK trademark and the additional letters “au” which is easily associated with Australia, carries a risk of Internet user confusion. Such composition of the disputed domain name does not support a finding of any rights or legitimate interests.

The Panel has weighed all available evidence and finds that the facts do not support a finding of any rights or legitimate interests of the Respondent in respect of the disputed domain name.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

### C. Registered and Used in Bad Faith

The Complainant’s TETRA PAK trademark was registered far predating the registration date of the disputed domain name (October 31, 2022). The Complainant submitted its official website content, social media

account content as evidence to support its reputation. The Panel accepts that the Complainant and its TETRA PAK trademark have gained a certain degree of reputation and recognition among relevant consumers worldwide. Thus, the Panel views that the Respondent should have been aware of the Complainant and its TETRA PAK trademark. Further, the Complainant's TETRA PAK trademark is not a dictionary word and it is of a certain distinctiveness, while the disputed domain name differs for only two letters "au" from the Complainant's trademark. The Panel finds that, on the balance of probabilities, the Respondent registered the disputed domain name in order to target the Complainant and its trademark.

The disputed domain name is passively held by the Respondent without actual use. After a weighing of the distinctiveness and reputation of the Complainant's TETRA PAK trademark, the Respondent's failure of submitting any response and evidence and other circumstances of the case, the Panel finds that the Respondent's passive holding of the disputed domain name does not prevent a finding of bad faith. See section 3.3 of the [WIPO Overview 3.0](#).

Given all the circumstances of the case, the Panel concludes that the Respondent registered and is using the disputed domain name in bad faith.

Accordingly, the Complainant has satisfied the third element under paragraph 4(a) 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 <tetrapakau.com> be transferred to the Complainant.

*/陈长杰 Jacob (Changjie) Chen/*

**陈长杰 Jacob (Changjie) Chen**

Sole Panelist

Date: January 30, 2023