

ADMINISTRATIVE PANEL DECISION

Tetra Laval Holdings & Finance S.A. v. Alon Garay Garay
Case No. D2022-3400

1. The Parties

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

The Respondent is Alon Garay Garay, United States of America.

2. The Domain Name and Registrar

The disputed domain name <tetrapak.com> (the “Disputed Domain Name”) is registered with Realtime Register B.V. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 13, 2022. On September 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On September 14, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 14, 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 September 19, 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 September 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 12, 2022.

The Center appointed Nicholas Weston as the sole panelist in this matter on October 19, 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 Complainant is a wholly owned subsidiary of the Swedish multinational food processing and packaging company Tetra Laval Group, with operations in more than 160 countries and more than 25,000 employees. The Complainant holds a number of registrations for the trademark TETRA PAK in numerous jurisdictions including, for example: International Trademark Registration No. 1146433 for TETRA PAK, registered on November 6, 2012.

The Complainant owns numerous domain names that comprise or contain the trademark TETRA PAK, including the domain name <tetrapak.com>.

The Disputed Domain Name was registered on August 29, 2022. The Disputed Domain Name has been used to send at least one fraudulent email.

5. Parties' Contentions

A. Complainant

The Complainant cites its Swedish Registered Trade Mark No. 71196 registered on December 14, 1951, and numerous other registrations around the world for the mark TETRA PAK, as *prima facie* evidence of ownership.

The Complainant submits that its rights in the mark TETRA PAK predate the Respondent's registration of the Disputed Domain Name. It submits that the Disputed Domain Name is confusingly similar to its trademark, because the Disputed Domain Name incorporates in its entirety the TETRA PAK trademark, simply adding an extra letter "r" in the middle and that the generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and as such should be disregarded under the first element confusing similarity test.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because it resolves to an inactive webpage and is being used in connection with email phishing so the Respondent has no legitimate interest in or legitimate *bona fide* business purpose for using the Disputed Domain Name. The Complainant also states that there is no business or legal relationship between the Complainant and the Respondent, and that the Respondent "has not acquired any trademark or service mark rights in that name or mark."

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith, contrary to the Policy and Rules and submits that the Respondent had used the Disputed Domain Name "for the purpose of impersonating an employee of the Complainant to obtain information and money" which, it submits, constitutes bad faith use.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant has the burden of proving the following:

(i) that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- (ii) that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- (iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has produced evidence to demonstrate that it has registered trademark rights in the mark TETRA PAK in numerous jurisdictions. The propriety of a domain name registration may be questioned by comparing it to a trademark registered in any country (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1).

Turning to whether the Disputed Domain Name is identical or confusingly similar to the TETRA PAK trademark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant's trademark TETRA PAK; (b) with an additional letter "r" after the letter "r" in the trademark; (c) followed by the gTLD ".com".

It is well established that the gTLD used as technical part of a domain name may be disregarded. (See section 1.11.1 of the [WIPO Overview 3.0](#)). The relevant comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: "tetrapak."

As the relevant mark is recognizable in the Disputed Domain Name, in line with previous UDRP decisions, this Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's TETRA PAK trademark for purposes of UDRP standing (see [WIPO Overview 3.0](#), section 1.7).

The Panel finds that the additional letter "r" does not avoid a finding of confusing similarity between the Disputed Domain Name and the Complainant's trademark, as 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 (see [WIPO Overview 3.0](#), section 1.9).

The Panel finds that the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists the ways that the Respondent may demonstrate rights or legitimate interests in the Disputed Domain Name. The Policy also places the burden on the Complainant to establish the absence of the Respondent's rights or legitimate interests in the Disputed Domain Name. Because of the inherent difficulties in proving a negative, the consensus view is that the Complainant need only put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. The burden of production then shifts to the Respondent to rebut that *prima facie* case (see [WIPO Overview 3.0](#), section 2.1).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because (i) the Disputed Domain Name resolved to an inactive website; (ii) the Respondent has not acquired or owned any trademark or service mark rights in the name TETRA PAK, and has not been commonly known by the name TETRA PAK; and (iii) the Respondent is using the Disputed Domain Name in connection with a phishing attempt that sought to impersonate an employee of the Complainant.

The Panel notes the evidence that the Disputed Domain Name in this proceeding was used to send an email on August 29, 2022 purporting to emanate from the Complainant's CFO. Panels have categorically held that the use of a Disputed Domain Name for illegal activity such as phishing can never confer rights or legitimate interests on a respondent (see [WIPO Overview 3.0](#), section 2.13).

The Panel is satisfied that the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests. In the absence of a response, this Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The Panel finds for the Complainant on the second element of the Policy.

C. Registered and Used in Bad Faith

The third element of the Policy that the Complainant must also demonstrate is that the Disputed Domain Name has been registered and used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both of these conjunctive requirements.

The Panel finds that the evidence in the case shows the Respondent registered and has used the Disputed Domain Name in bad faith.

On the issue of registration, this Panel infers that the Respondent knew, or should have known, that its registration of the Disputed Domain Name would be confusingly similar to the Complainant's widely used trademark (see *Tetra Laval Holdings & Finance S.A. v. TetraPak Global PH-AU, Gerald Smith*, WIPO Case No. [D2012-0847](#) ("the "Tetra Pak" name is distinctive and well-known internationally"); *Tetra Laval Holdings & Finance S.A. v. Named Redacted*, WIPO Case No. [D2015-2034](#) ("the Complainant's well-known trademark TETRA PAK").

This Panel accepts, as the basis of a further finding of bad faith, the Complainant's uncontested submission (citing *Research In Motion Limited v. Dustin Picov*, WIPO Case No. [D2001-0492](#)) that "the [D]isputed [D]omain [N]ame was registered with a deliberate intent to create an impression of an association with the Complainant" (see: *Charles Jourdan Holding AG v. AAJM*, WIPO Case No. [D2000-0403](#) (which held that the domain name in question was "so obviously connected with the Complainant and its products that its very use by someone with no connection with Complainant suggests opportunistic bad faith").

Further, a gap of several years between registration of a complainant's trademark and a respondent's registration of a disputed domain name (containing the trademark) can indicate bad faith registration (see *Asian World of Martial Arts Inc. v. Texas International Property Associates*, WIPO Case No. [D2007-1415](#)). In this case, the Disputed Domain Name was registered more than 70 years after the Complainant established registered trademark rights in the TETRA PAK mark.

On the issue of use, there is evidence that the Disputed Domain Name has been used for fraud or phishing to impersonate the CFO of the Complainant. Past panels have held that the use of a domain name for *per se* illegitimate activity such as phishing, is considered to be evidence of bad faith (see [WIPO Overview 3.0](#) at Section 3.1.4). In support of this contention is a copy of an email putatively from the CFO of the Complainant from the email address "[...]@tetrapak.com". The Panel has performed a DNS lookup¹ and found that the DNS 'mail exchange' (MX) record has been activated for the Disputed Domain Name, allowing email to be routed to a mail server, in further evidence of bad faith under the Policy in view of the increased risk of fraud or phishing (see: *Drägerwerk AG & Co. KGaA v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / BLACK ROSES*, WIPO Case No. [D2020-3167](#). ("Furthermore, the certificate and the MX record relating to the disputed domain name suggest that it is or was possibly used for email communication. Under these circumstances, the Panel considers it likely that the Respondent intended to use the disputed domain name as a support for a potential fraudulent email scheme, namely to impersonate the Complainant and extract personal or financial data from persons believing that the communication comes from the Complainant"). This Panel therefore makes a finding of bad faith on that basis.

In the absence of any evidence to the contrary, this Panel accepts the Complainant's evidence and finds that the Respondent has taken the Complainant's trademark TETRA PAK and incorporated a version of it with the letter "r" interposed after the letter 'r', in the Disputed Domain Name, without the Complainant's consent or authorization, for the very purpose of capitalizing on the reputation of the trademark to infringe upon the

¹ Using MX Toolbox located at <https://mxtoolbox.com/SuperTool.aspx?action=a%3atetrapak.com&run=toolpage> accessed on October 22, 2022. It has long been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision (See [WIPO Overview 3.0](#), section 4.8).

Complainant's rights.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of 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, <tetrapak.com>, be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: November 2, 2022