

ADMINISTRATIVE PANEL DECISION

Tetra Laval Holdings & Finance S.A. v. Evelyn Bryant, GLEN CLEANING Case No. D2022-4264

1. The Parties

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

The Respondent is Evelyn Bryant, GLEN CLEANING, United States of America.

2. The Domain Name and Registrar

The disputed domain name <tetaparak.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2022. On November 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 9, 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 November 9, 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 14, 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 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 8, 2022.

The Center appointed Warwick Smith as the sole panelist in this matter on December 12, 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 Swiss corporation, which is part of the Tetra Laval Group. The Tetra Laval Group consists of three independent industry groups, one of which is the “Tetra Pak” Group (“Tetra Pak”). Tetra Pak is a multi-national food processing and packaging group founded in 1947 in Sweden. It develops, markets and sells equipment for processing, packaging and distribution of food products.

The Complainant operates a website at “www.tetrapak.com”. Extracts from this website confirm that the Complainant operates in more than 160 countries worldwide, including the United States of America, where the Respondent is located. The Complainant says that Tetra Pak is a world leader in its field, and employs more than 25,000 people around the world.

The Complainant is the registered proprietor of the mark TETRA PAK in numerous jurisdictions. For the purposes of this decision it is not necessary to refer to them all. It is enough to record that the Complainant has been the registered proprietor of the word mark TETRA PAK in the United States of America since September 22, 1953 (registration number 0580219), and March 9, 1954 (registration number 586480), in respect of various classes of goods and services. The Complainant also holds international and European Union registrations of the word mark TETRA PAK. The European Union Trade Mark (No. 001202522) was registered on October 2, 2000, and the international mark (No. 1146433) was registered on November 6, 2012.

In addition to its numerous TETRA PAK trademark registrations, the Complainant is the owner of more than 300 domain name registrations throughout the world containing the TETRA PAK mark. These registrations include <tetrapak.com>, at which the Complainant operates its principal website.

The Complainant referred to a number of previous UDRP cases in which the fame of the Complainant’s TETRA PAK has been acknowledged.¹

The disputed domain name was registered on May 10, 2022. The Complainant says that the Respondent has been using it for phishing purposes.

In support of that contention, the Complainant produced a copy of an email dated August 25, 2022, sent from “[...]@tetrapak.com” to an individual whose name was redacted from the copy of the email provided by the Complainant. The heading of the email was “Re Payment from Tetra Pak to . . .”, and the email was purportedly sent by the same named individual in his capacity as “Supply Manager, Tetra Pak Processing Solutions and Equipment”. There followed a Tetra Pak address in Denmark, and a link to the Complainant’s principal website at “www.tetrapak.com”.

This email was not sent by or with the authority of the Complainant. The text of the email appears to have been concerned with payments made, or to be made, by Tetra Pak to the recipient of the email.

In accordance with usual practice, the Panel has endeavored to visit any website to which the disputed domain name might resolve. That attempt was made on December 15, 2022. The Panel was unable to locate any website at the disputed domain name.

¹ *Tetra Laval Holdings & Finance S.A. v TetraPak Global PH-AU*; *Gerald Smith*, WIPO Case No. [D2012-0847](#); *Tetra Laval Holdings & Finance S.A. v Kilt Kully Huy*, WIPO Case No. [D2019-0802](#); *Tetra Laval Holdings & Finance S.A. v ddd Firat Analiz*, WIPO Case No. [D2019-2864](#); *Tetra Laval Holdings & Finance S.A. v Whois Agent (693439573)*, WIPO Case No. [D2020-3105](#); and *Tetra Laval Holdings & Finance S.A. v WhoidGuard Protected, WhoisGuard Inc./Zetao Wang*, WIPO Case No. [D2021-0559](#).

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its TETRA PAK mark. It submits that the misplacement of the letter "r" in the disputed domain name does not provide sufficient distinction from its mark, and that this is a clear case of typosquatting.

The Complainant next contends that the Respondent has no rights to, or legitimate interest in, the disputed domain name. The Complainant has made long and continuous prior use of the TETRA PAK mark, and the Respondent has not been licensed or otherwise authorized to use the Complainant's TETRA PAK mark. The Respondent is not affiliated or related to the Complainant in any way.

The Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services, and is not generally known by the disputed domain name. A phishing scam such as that evidenced by the email dated August 25, 2022, cannot be considered a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use of a domain name (referring to *Pfizer Inc. v Michael Chucks/WhoisGuard Protected, WhoisGuard Inc.*, WIPO Case No. [D2014-7887](#); and *CMA CGM v Diana Smith*, WIPO Case No. [D2015-1774](#)).

The Respondent's use of the disputed domain name to create an email for phishing purposes also shows that the Respondent registered and is using the disputed domain name in bad faith. The Respondent chose the expression "tetaprak" as the substantial component of the disputed domain name in order to trade off the Complainant's goodwill and reputation in its TETRA PAK mark, or to create a false impression of an association, sponsorship or endorsement with or by the Complainant.

The Complainant also referred to *Carrefour v Jason host LLC*, WIPO Case No. [D2019-1588](#), in support of the submission that the presence of an email server linked with a domain name reproducing a well-known third party's trademark generates a risk of illegitimate use of the disputed domain, by falsely impersonating the Complainant, thus misleading potential consumers as to the origin of the email address illegitimately associated with the disputed domain name.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a Complainant is required to establish each of the following –

- (i) the domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has proved this part of the Complaint.

The Complainant is the registered proprietor of the mark TETRA PAK in numerous jurisdictions around the world, and that is sufficient for it to establish "rights" in that mark for the purposes of para. 4(a)(i) of the Policy.

The disputed domain name differs from the Complainant's TETRA PAK mark only by the transposition of the letter "r" from its position as the fourth letter in the word "tetra" to become an additional (second) letter in the word "pak". This is an obvious, intentional misspelling of the Complainant's TETRA PAK mark, and UDRP panels have consistently regarded such disputed domain names as confusingly similar to the complainant's mark for the purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) states at section 1.9:

"A domain name which consists of a common, obvious or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element. . . ."

In this case, there has been an inversion of letters within the disputed domain name, and the misspelling is obvious and clearly intentional. That is apparent from the close visual similarity between the disputed domain name and the TETRA PAK mark, and the Respondent's knowledge of the Complainant's mark (demonstrated by the email of August 25, 2022).

Finally, the Complainant is correct in submitting that the generic Top-Level Domain ("gTLD") ".com" should not be taken into account in the comparison that is required by paragraph 4(a)(i) of the Policy. The gTLD is a technical requirement of registration, and is not normally considered to have legal significance in applying paragraph 4(a)(i).²

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy set out a number of circumstances which, without limitation, may be effective for a respondent to demonstrate that it has rights to, or legitimate interests in, a domain name for the purposes of paragraph 4(a)(ii) of the Policy. The 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 disputed 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 disputed domain name, even if [the respondent has] acquired no trade mark or service mark rights; or
- (iii) Where [the respondent is] making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly direct consumers or to tarnish the trade mark or service mark at issue.

[WIPO Overview 3.0](#) states the following on the burden of proof under paragraph 4(a)(ii) of the Policy:

"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 this case, the disputed domain name is confusingly similar to the Complainant's TETRA PAK mark, which the Panel accepts is well known around the world. There is nothing to suggest that the Respondent has been commonly known by the disputed domain name, and the Respondent has not been licensed or

² [WIPO Overview 3.0](#), paragraph 1.11.

otherwise authorized to use the Complainant's TETRA PAK mark.

In the absence of any response to the complaint, the Panel can only conclude from the combination of apparent typosquatting in the selection of the disputed domain name, and the apparent attempt by the Respondent to masquerade as the Complainant³, that the Respondent did indeed register the disputed domain name for the purpose of impersonating an employee of the Complainant. As the Complainant submits, scams of that sort cannot be considered to be *bona fide* offerings of goods or services, or as a legitimate noncommercial or fair use of a domain name. (*Pfizer Inc. v Michael Chucks/Whoisguard Protected, Whoisguard Inc*, WIPO Case No. [D2014-0887](#), and *CMA CGM v Diana Smith*, WIPO Case No. [D2015-1774](#)).

Those matters in combination are sufficient to establish a *prima facie* case under paragraph 4(a)(ii) of the Policy. The evidential burden of showing rights or legitimate interests in respect of the disputed domain name therefore moves to the Respondent. In the absence of any response, the Respondent has failed to discharge that evidential burden, and the Complainant's *prima facie* proof must prevail. The Complainant has made out its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, the following circumstances, without limitation, are deemed (if found by the Panel to be present) to be evidence of the registration and use of a 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 trade mark 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 trade mark 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 Complainant has also sufficiently proved this part of the complaint.

The Panel accepts the Complainant's submission that, given the distinctive nature of its TETRA PAK mark and the lack of any apparent connection between the word "tetaprak" and the Respondent, the only sensible explanation for the Respondent's choice of the disputed domain name must have been (i) to trade off the Complainant's goodwill and reputation in its TETRA PAK mark, or (ii) to otherwise create the false impression that the Respondent is (or is associated with) the Complainant.

The Respondent's proved use of the disputed domain name supports the overall impression that the Respondent has acted in bad faith. The August 25, 2022 email, from an email server linked to the disputed domain name, clearly evidences an attempt to impersonate a named employee of the Complainant. In the absence of any response, the Panel infers that that was done either to derive financial gain (whether immediately, or by obtaining information with a view to later deriving a financial benefit), or to maliciously

³ Evidenced by the email of August 25, 2022.

interfere with a relationship between the Complainant and one of its suppliers or customers.

Such use of the disputed domain name is a bad faith use. [WIPO Overview 3.0](#) states at section 3.4:

“Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft. . . . Many such cases involve the respondent’s use of the domain name to send deceptive emails. . . .”

An example of one such case is *Aria Foods Ambg v Michael Guthrie*, WIPO Case No. [D2016-2213](#). In that case, the respondent used the domain name in issue to send several emails impersonating an employee of the complainant to one of the complainant’s customers, in furtherance of a fraudulent scheme.

The panel in *Aria Foods* noted that the examples of bad faith registration and use set out in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which bad faith may be found. The overriding objective of the Policy was said to be to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. On the facts of the case, the panel considered that bad faith registration and use was established under paragraph 4(b)(iii) of the Policy. The respondent’s motive had been to capitalize on, or otherwise take advantage of, the complainant’s trademark rights, by creating a likelihood of confusion with the complainant’s mark, with the intention to unlawfully profit from what was an unlawful and fraudulent scheme directed at one of the complainant’s customers.

In this case, the email of August 25, 2022 appears to be concerned with payments due to be made by the Complainant to one of its customers or suppliers, but apparently not made. The email concludes with an apology for “any inconvenience”. The email was not in fact from the Complainant, and on its face it was clearly disruptive of the Complainant’s business. As in the *Aria Foods* case, the circumstances show that the Respondent deliberately created a likelihood of confusion with the Complainant and its TETRA PAK mark, and attempted to impersonate an employee of the Complainant.

While the circumstances in this case might not fall within paragraph 4(b)(iii) of the Policy (there is no evidence that the Respondent is a competitor of the Complainant), and paragraph 4(b)(iv) might not be a perfect fit either (it is not clear how the August 25, 2022 email might have created commercial gain for the Respondent), the deliberate creation of a domain name that is confusingly similar to the Complainant’s well-known mark, and the subsequent use of that domain name to attempt to impersonate one of the Complainant’s employees, at very least disclose a degree of malice directed at the Complainant in an apparent attempt to disrupt the Complainant’s relationship with one of its suppliers or customers. In the Panel’s view, those circumstances clearly come within the kind of abusive registration and use to which paragraph 4(a)(iii) of the Policy is directed.

That finding is consistent with the view taken by the panel in *Spoke Media Holdings Inc. v Andrey Volkov*, WIPO Case No. [D2010-1303](#), where the respondent had used the at-issue domain name to cause confusion and disruption, but it was not clear that the respondent had done so for commercial gain, or whether he was a competitor of the complainant. The Panel said:

“However, it is clear that the motive was malicious. As such, even though it cannot be held that the Respondent’s conduct falls strictly within one of the specific examples of conduct that constitutes bad faith set out in the Policy . . . these examples are non-exhaustive. Due to the deceptive and malicious conduct of the Respondent the Panelist finds that the Domain Name has been registered and used in bad faith.”

The Complainant having proved each element of the Complaint, there will be an order transferring the disputed domain name to the Complainant.

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 <tetaprac.com> be transferred to the Complainant.

/Warwick Smith/

Warwick Smith

Sole Panelist

Date: December 26, 2022