

ADMINISTRATIVE PANEL DECISION

Tetra Laval Holdings & Finance S.A. v. Jose Estrada
Case No. D2023-0536

1. The Parties

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

The Respondent is Jose Estrada, Venezuela.

2. The Domain Name and Registrar

The disputed domain name <tetrapakmx.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 February 6, 2023. On February 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 7, 2023, 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.

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 February 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 7, 2023.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on March 13, 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 is a Swiss corporation, part of the Tetra Laval Group, which consists of three independent industry groups: DeLaval, Sidel Group, and Tetra Pak.

Tetra Pak, an affiliate of the Complainant, is a multinational food processing and packaging company founded in 1947 in Sweden. This company is the world leader in the development, production, and sale of equipment and processing plants for making, packaging, and distributing foods and accessories, and employs more than 25,000 persons in over 160 countries around the world.

The Complainant is the owner of over 1,500 trademark registrations around the world, among others, the following:

Trademark	No. Registration	Jurisdiction	Date of Registration
TETRA PAK	71183	Mexico	September 17, 1952
TETRA PAK	586480	United States of America	March 9, 1954
TETRA PAK	1202522	European Union	October 2, 2000
TETRA PAK	1146433	International Registration	November 11, 2012

The Complainant is also the owner of multiple domain names, among others <tetrapak.com>, which resolves to the Complainant's official website.

The disputed domain name was registered on November 2, 2022. The disputed domain name resolved to a website that displayed information regarding a car manufacturer's plant in Mexico, and it currently resolves to an inactive website.

5. Parties' Contentions

A. Complainant

1. Identical or Confusingly Similar

That the disputed domain name is confusingly similar to the Complainant's trademark, as it incorporates the well-known trademark TETRA PAK with the addition of "mx", which is the abbreviation for Mexico according to the International Organization for Standardization ("ISO").

That, according to case law, the linking of a trademark with a geographical term does not distinguish the domain name from the trademark. That consumers will believe that the domain name is owned by, sponsored by, or otherwise affiliated with the trademark owner

That the addition of the generic Top-Level Domain ("gTLD") ".com" must be excluded from consideration because the gTLD has no legal significance and may be disregarded when conducting the confusing similarity test.

2. Rights or Legitimate Interests

That the Respondent has no rights to or legitimate interests in the disputed domain name.

That the Respondent is not affiliated with or related to the Complainant in any way, nor is it licensed or otherwise authorized to use the TETRA PAK trademark in connection with a website, or for any other purpose.

That the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services.

That the Respondent is not generally known by the disputed domain name and has not acquired any trademark or service mark rights in that name.

That the Respondent could not have been ignorant of the rights held by the Complainant and its business.

That the Respondent's unauthorized use of the Complainant's trademark shows that the Respondent is well aware of the Complainant, and hence intentionally diverted consumers for commercial gain.

3. Registered and Used in Bad Faith

That the Respondent has intentionally registered and used the disputed domain name in bad faith.

That, considering the composition of the disputed domain name, it is apparent that the Respondent must have known the Complainant, its trademark, and its business when registering said disputed domain name. That, being so, the Respondent could not have chosen the Complainant's trademark in combination with the geographic term "mx" for any other reason than to trade-off the goodwill and reputation of the Complainant's trademark or otherwise create a false association with, sponsorship, or endorsement from the Complainant.

That the Respondent has deliberately disrupted the business of the Complainant for commercial gain.

That the Respondent is seeking to create an impression of association with the Complainant by registering the disputed domain name without permission.

That the registration and use of well-known trademarks can never confer rights or legitimate interests upon a respondent.

That the Respondent was more likely than not aware of the well-known status of the TETRA PAK trademark and the Complainant's worldwide business including Mexico.

That, hence, the purpose of the registration of the disputed domain name and the Respondent's use of the Complainant's trademarks has been to create an impression of association with the Complainant.

That the Complainant has no business relationship with the Respondent. That, therefore, the unauthorized use of TETRA PAK is tarnishing the reputation of the Complainant's trademark.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant is required to prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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 was registered and is being used in bad faith.

Given the Respondent's failure to submit a formal Response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations under paragraphs 5(f), 14(a), and 15(a) of the Rules, (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech WIPO Case No. D2006-0292*, and *Encyclopaedia Britannica, Inc. v. null John Zuccarini, Country Walk, WIPO Case No. D2002-0487*).

A. Identical or Confusingly Similar

The disputed domain name <tetrapakmx.com> is confusingly similar to the TETRA PAK trademark since it includes it entirely.

The incorporation of the ISO-3166-2 code for Mexico "mx" does not prevent a finding of confusing similarity, because the Complainant's trademark TETRA PAK is recognizable in the disputed domain name (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"; see also *Playboy Enterprises International, Inc. v. Zeynel Demirtas*, WIPO Case No. [D2007-0768](#); *InfoSpace.com, Inc. v. Hari Prakash*, WIPO Case No. [D2000-0076](#); *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#); and *Six Continents Hotels, Inc., Inter-Continental Hotels Corporation v. South East Asia Tours*, WIPO Case No. [D2004-0388](#)).

The inclusion of the gTLD ".com" in the disputed domain name constitutes a technical requirement of the Domain Name System ("DNS"). Therefore, it has no legal significance in the present case (see *CARACOLITO S SAS v. Nelson Brown, OXM.CO*, WIPO Case No. [D2020-0268](#); *SAP SE v. Mohammed Aziz Sheikh, Sapteq Global Consulting Services*, WIPO Case No. [D2015-0565](#); and *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#)).

In light of the above, the first element of the Policy has been met.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets forth the following examples as circumstances where a respondent may have rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the 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) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if it did not acquire trademark or service mark rights; or
- (iii) 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.

The Panel agrees with previous panels appointed under the Policy, in that the TETRA PAK trademark is well known (see *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. JERRI BROWN* WIPO Case No. [D2016-1663](#); *Tetra Laval Holdings & Finance S.A. v. Johnson Zhang* WIPO Case No. [D2022-2424](#), and *Tetra Laval Holdings & Finance S.A. v. Danielle Wolfe* WIPO Case No. [D2023-0362](#)).

The Complainant has asserted that the Respondent is not affiliated with or related to the Complainant in any way, nor is it licensed or otherwise authorized to use the TETRA PAK trademark in the disputed domain name, and that the Respondent has not been commonly known by said disputed domain name (see *Beyoncé Knowles v. Sonny Ahuja*, WIPO Case No. [D2010-1431](#); and *Six Continents Hotels, Inc. v. IQ Management Corporation*, WIPO Case No. [D2004-0272](#)). The Respondent did not contest these allegations.

The disputed domain name consists of the Complainant's trademark TETRA PAK plus the ISO-3166-2 code for Mexico "mx". Thus, it can be inferred that the disputed domain name carries a risk of implied affiliation, since Internet users may think that it is affiliated to or sponsored by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#), see also *Euro Sko Norge AS v. Whoisguard Inc. / Shier Dede, Shier Dede*, WIPO Case No. [D2020-0194](#), *Bechtel Group, Inc. v. Raman Shuk* WIPO Case No. [D2020-1469](#), *Biofarma v. Dawn Mason*, WIPO Case No. [D2019-1952](#)).

The case file contains no evidence demonstrating that the Respondent has used or has made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. On the contrary, the Complainant has proven that the disputed domain name resolved to a website that displayed information regarding a car manufacturer's plant in Mexico, and that it currently resolves to an inactive website. Therefore, there is no evidence proving that the Respondent has used the disputed domain in connection with a *bona fide* offering of goods or services. On the contrary, the case file contains evidence proving that the disputed domain name has been used to divert Internet users for commercial gain, presumably in an attempt to capitalize on the reputation and goodwill of the Complainant's trademark (see section 2.5.3 of the [WIPO Overview 3.0](#)).

In sum, the Complainant made a *prima facie* case that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Respondent did not submit any evidence or arguments to challenge the Complainant's assertions.

Therefore, the second element of the Policy has been fulfilled.

C. Registered and Used in Bad Faith

Bad faith under the Policy is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. According to paragraph 4(b) of the Policy, the following circumstances, in particular but without limitation, shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent 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 its documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent 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 respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on its website or location.

The fact that the Respondent registered the disputed domain name, which entirely reproduces the Complainant's well-known trademark TETRA PAK, shows that the Respondent has targeted the Complainant, which constitutes opportunistic bad faith (see section 3.2.1 of the [WIPO Overview 3.0](#); see also *L'Oréal v. Contact Privacy Inc. Customer 0149511181 / Jerry Peter*, WIPO Case No. [D2018-1937](#); *Gilead Sciences Ireland UC / Gilead Sciences, Inc. v. Domain Maybe For Sale c/o Dynadot*, WIPO Case No. [D2019-0980](#); *Dream Marriage Group, Inc. v. Romantic Lines LP, Vadim Parhomchuk*, WIPO Case No. [D2020-1344](#); *Valentino S.p.A. v. Qiu Yufeng, Li Lianye*, WIPO Case No. [D2016-1747](#), *Landesbank Baden-Württemberg (LBBW) v. David Amr* WIPO Case No. [D2021-2322](#) "Given the distinctiveness of the

Complainant's trademark, it is reasonable to infer that the Respondent has registered the Disputed Domain Name with full knowledge of the Complainant's trademarks, constituting opportunistic bad faith. The Panel finds it hard to see any other explanation than that the Respondent knew of the Complainant's well-known trademark.").

Previous panels appointed under the Policy have found that the mere registration by an unauthorized party of a domain name that entirely incorporates a well-known trademark can constitute bad faith in itself (see section 3.1.4 of the [WIPO Overview 3.0](#); see also *Ferrari S.p.A. v. Ms. Lee Joohee (or Joo-Hee)*, WIPO Case No. [D2003-0882](#)). Given the circumstances of this case, the Panel finds that this is so in the present proceeding.

The facts comprised in the case docket also show that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the website to which the disputed domain name resolved, by creating the impression among Internet users that said a website was related to, associated with, or endorsed by the Complainant, which conduct constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#); see also *trivago GmbH v. Whois Agent, Whois Privacy Protection Service, Inc. / Alberto Lopez Fernandez, Alberto Lopez*, WIPO Case No. [D2014-0365](#); and *Jupiter Investment Management Group Limited v. N/A, Robert Johnson*, WIPO Case No. [D2010-0260](#)).

Thus, the third element of the Policy has been met.

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 <tetrapakmx.com> be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: March 27, 2023