

ADMINISTRATIVE PANEL DECISION

Tetra Laval Holdings & Finance S.A. v. hcm, unico
Case No. D2023-2850

1. The Parties

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

The Respondent is hcm, unico, Cambodia.

2. The Domain Name and Registrar

The disputed domain name <tetrapakvn.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 4, 2023. On July 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 6, 2023, 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 (Hidden contact information) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 2023, 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 July 6, 2023.

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 July 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2023. On July 11, 2023, the Center received an email communication from the Respondent, in which it identified itself as the service provider of the disputed domain name. The Center notified the Respondent's default on August 4, 2023.

The Center appointed Edoardo Fano as the sole panelist in this matter on August 15, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers, or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreement, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Tetra Laval Holdings & Finance S.A., a Swiss corporation which is part of the Tetra Laval Group. Within the Tetra Laval Group, the Tetra Pak Group is a multinational food processing and packaging company and is operative in more than 160 countries worldwide, including Cambodia, that is the Respondent's location. The Complainant owns several trademark registrations for TETRA PAK, among which:

- International Trademark Registration No. 1146433 for TETRA PAK, registered on November 6, 2012;
- United States of America Trademark Registration No. 0586480 for TETRA PAK, registered on March 9, 1954;
- Cambodian Trademark Registration No. KH/2003/17809 for TETRA PAK, registered on May 2, 2003; and
- European Union Trade Mark Registration No.001202522 for TETRA PAK, registered on October 2, 2000.

The Complainant also operates on the Internet and owns several domain name registrations for TETRA PAK, including <tetrapak.vn> and being "www.tetrapak.com" its main website.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain name was registered on June 24, 2023, and it is currently inactive. However, when the Complaint was filed, the disputed domain name resolved to a website in which the Complainant's trademark and logo were reproduced, and the Complainant provided evidence that the disputed domain name was used to conduct a fraudulent phishing activity.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its trademark TETRA PAK, as the disputed domain name incorporates the Complainant's trademark in its entirety.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, it is not commonly known by the disputed domain name, and it is not making either a *bona fide* offering of goods or services or a legitimate

noncommercial or fair use of the disputed domain name. The disputed domain name was used for a fraudulent phishing activity and it resolved to a website in which the Complainant's trademark and logo were reproduced.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark TETRA PAK is well known in the field of food processing and packaging. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and the Complainant contends that the use of the disputed domain name to conduct a fraudulent phishing activity and to attract, for commercial gain, Internet users to the Respondent's website, creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, qualifies as bad faith registration and use.

B. Respondent

The Respondent sent an email communication on July 11, 2023, but it made no formal reply to the Complainant's contentions.

6. Discussion and Findings

6.1 Respondent's Identity

The Panel notes that paragraph 1 of the Rules defines Respondent as "the holder of a domain-name registration against which a complaint is initiated".

According to the Registrar, the registrant of the disputed domain name is hcm, unico. In its informal email sent to the Center on July 11, 2023, the Respondent indicated that it is "just a service provider for the owner of the domain name "tetrapakvn.com"", that it had "canceled all services with this customer" and that there was nothing more it could do about this case.

The Panel notes that little is known about the claimed customer (beneficial holder). Further, there is no evidence on the existence of the relationship between the Respondent and the alleged beneficial holder. Irrespective of whether there is an actual beneficial holder or not, for all the above reasons the Panel, on the balance of probabilities, believes that the named Respondent is indeed the registrant of the disputed domain name and that it has control of it. As a consequence, the Panel has decided to consider that hcm, unico is the Respondent.

6.2 Substantive Issues

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant is the owner of the trademark TETRA PAK both by registration and acquired reputation and that the disputed domain name is confusingly similar to the trademark TETRA PAK.

Regarding the addition of the letters "vn" (as the geographical code for Viet Nam), the Panel notes that it is now well established that the addition of other terms (whether descriptive, geographical terms, letters, or

otherwise) to a domain name does not prevent a finding of confusing similarity between the disputed domain name and the trademark. The additional letters do not therefore prevent the disputed domain name from being confusingly similar to the Complainant's trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

It is also well accepted that a generic Top-Level Domain, in this case ".com", is typically ignored when assessing the similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is confusingly similar to the Complainant's trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following circumstances, in particular but without limitation:

"(i) before any notice to you [the respondent] of the dispute, [the respondent's] your use of, or demonstrable preparations to use, the 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] you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) [the respondent] you are 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."

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving the three elements of the Policy. However, satisfying the burden of proving a lack of the Respondent's rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a)(ii) of the Policy is potentially quite difficult, since proving a negative circumstance is generally more complicated than establishing a positive one. As such, it is well accepted that it is sufficient for the Complainant to make out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain name for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services. The disputed domain name was used for a fraudulent phishing activity and it resolved to a website in which the Complainant's trademark and logo were reproduced.

According to the [WIPO Overview 3.0](#), section 2.13.1:

"Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent [...]."

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name.

Moreover, the Panel finds that the composition of the disputed domain name, which includes the Complainant's trademark in its entirety with the addition of the geographical code "vn", carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

Based on the facts of this case, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel therefore finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that "[f]or the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name 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 the 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 [the respondent'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 respondent's] website or location or of a product or service on [the respondent's] website or location".

Regarding the registration in bad faith of the disputed domain name, the reputation of the Complainant's trademark TETRA PAK in the field of food processing and packaging is clearly established and the Panel finds that the Respondent likely knew of the Complainant and its trademark, and deliberately registered the disputed domain name in bad faith, especially because in the website at the disputed domain name the Complainant's trademark and logo were reproduced.

The Panel further notes that the disputed domain name was also used in bad faith since the Respondent was trying to impersonate the Complainant, in connection to a phishing scheme, with the purpose of intentionally attempting to create a likelihood of confusion with the Complainant's trademark as to the disputed domain name's source, sponsorship, affiliation, or endorsement, an activity clearly detrimental to the Complainant's business. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.4.

The above suggests to the Panel that the Respondent intentionally registered and was using the disputed domain name in order both to disrupt the Complainant's business, and to attract Internet users to its website in accordance with paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

As regards the current use of the disputed domain name, which is inactive, the Panel considers that bad faith may exist even in cases of so-called “passive holding”, as found in the landmark UDRP decision *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the circumstances of this case, the Panel finds that such passive holding does not prevent a finding of bad faith. See [WIPO Overview 3.0](#), section 3.3. In support thereof, the Panel considers as relevant the notoriety of the Complainant’s trademark in the field of food processing and packaging, the identical incorporation of said distinctive trademark, and the Respondent’s failure to formally participate.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain name, which includes the Complainant’s trademark in its entirety with the addition of the geographical code “vn”, further support a finding of bad faith. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been satisfied.

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, <tetrapakvn.com>, be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: August 21, 2023