

## **ADMINISTRATIVE PANEL DECISION**

Plastipak Packaging Inc. v. Devin, 423-87-1051

Case No. D2023-3375

### **1. The Parties**

The Complainant is Plastipak Packaging Inc., United States of America (“United States”), represented by ZeroFox, United States.

The Respondent is Devin, 423-87-1051, United States.

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

The disputed domain name <plastipak.company> is registered with Squarespace Domains II LLC (the “Registrar”).<sup>1</sup>

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 7, 2023. On August 7, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 8, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 10, 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 amendment to the Complaint on August 21, 2023.

The Center verified that the Complaint, together with the amendment to 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 August 31, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 20, 2023. The Respondent did not submit any response.

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<sup>1</sup> The Complaint was filed identifying the Registrar as Google LLC. On October 2, 2023, Google LLC confirmed that the disputed domain name is registered with Squarespace Domains II LLC following a purchase agreement. Google LLC has confirmed both Registrars’ compliance with the UDRP and the implementation of the decision by either Registrar.

Accordingly, the Center notified the Respondent's default on September 21, 2023.

The Center appointed Evan D. Brown as the sole panelist in this matter on September 25, 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 designs and manufactures plastic containers for beverage, consumer cleaning, food, industrial and automotive, and personal care products. It owns the mark PLASTIPAK, which is the subject of United States Trademark Registration No. 3552420, registered on December 30, 2008. The aforementioned registration certificate lists a date of first use in commerce of the mark of October 23, 2007. According to the Complaint, the Complainant registered the domain name <plastipak.com> in 1996. According to the Whois information, the disputed domain name was registered on May 18, 2023. The Complainant asserts that the disputed domain name has not been used with an active website but that MX records have been established in connection with the disputed domain name, indicating that the disputed domain name has been used for email.

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

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

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

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

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

#### **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, (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. The Panel finds that all three of these elements have been met in this case.

##### **A. Identical or Confusingly Similar**

This first element functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the PLASTIPAK mark by providing evidence of its trademark registration.

The disputed domain name incorporates the PLASTIPAK mark in its entirety. For purposes of the Policy, it is identical to the PLASTIPAK mark.

Accordingly, the Panel finds that the Complainant has established this first element under the Policy.

## **B. Rights or Legitimate Interests**

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the Respondent has made no attempt or preparations to use the disputed domain name for a *bona fide* offering of goods or services, (2) the Respondent has no claim to a fair use purpose such as commentary or criticism, and (3) the Respondent is highly unlikely to be commonly known by the disputed domain name and there is no suggestion in the current facts that it is, and (4) the presence of MX records indicates that the Respondent intends to use the disputed domain name to send emails, giving the impression that the disputed domain is affiliated with or owned by the Complainant, causing confusion.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent's favor. Moreover, the Panel finds that the disputed domain name is inherently misleading. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

## **C. Registered and Used in Bad Faith**

Because the Complainant's mark has been used in commerce for many years, and because of the trademark registration, the Panel finds it likely that the Respondent was aware of the PLASTIPAK mark when it registered the disputed domain name. In the circumstances of this case, without the benefit of any explanation whatsoever from the Respondent as to a possible good faith use of the disputed domain name, such a showing is sufficient to establish bad faith registration of the disputed domain name.

The circumstances also demonstrate bad faith use of the disputed domain name in terms of the Policy. Where a disputed domain name is "so obviously connected with such a well-known name and products...its very use by someone with no connection with the products suggests opportunistic bad faith." See, *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#). Furthermore, from the inception of the UDRP, panels have found that the non-use of a domain name (including a blank page) would not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Respondent's bad faith is also evidenced by its use of a privacy service to obscure its identity. See *Pet Plan Ltd v. Mohammed Nahhas*, WIPO Case No. [D2021-1964](#).

The Respondent's bad faith is moreover evidenced by its establishment of MX records with the disputed domain name, suggesting the disputed domain name could be used to send fraudulent email. See *Carrier Corporation v. DNS Admin, Domain Privacy LTD*, WIPO Case No. [D2021-3728](#) ("if the Respondent is using the disputed domain name to send fraudulent emails – which the MX records suggest is at least a possibility – then bad faith use is further obvious").

Based on the available record, the Panel finds the third element of the Policy has been established.

## 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 <plastipak.company> be transferred to the Complainant.

*/Evan D. Brown/*

**Evan D. Brown**

Sole Panelist

Date: October 9, 2023