

ADMINISTRATIVE PANEL DECISION

Tetra Laval Holdings & Finance SA v. Hasty Engineer, Hasty Engineers (Pvt.) Ltd

Case No. D2024-1968

1. The Parties

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

The Respondent is Hasty Engineer, Hasty Engineers (Pvt.) Ltd, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <tetrapakworld.com> is registered with Web Commerce Communications Limited dba WebNic.cc (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 10, 2024. On May 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 13, 2024, 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 (Domain Admin, Whoisprotection.cc) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 14, 2024, 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 May 17, 2024.

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").

The Respondent sent two informal email communications to the Center on May 18, 2024, and a third party sent an informal email communication to the Center on May 19, 2024.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2024. The Center notified the commencement of Panel appointment process on June 13, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on June 24, 2024. 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 part of the multinational food processing and packaging group trading as TETRA PAK, that was founded in 1947. The group employs over 25,000 people and operates in more than 160 countries worldwide.

The Complainant owns many trade marks for TETRA PAK including International Registration No. 1146433, registered on November 6, 2012, in classes 7, 11, 16, 29, 30, 32, 33, 37 and 42.

The Complainant operates a website at “www.tetrapak.com”.

The disputed domain name was registered on April 8, 2022.

The company identified by the Registrar as the registrant of the disputed domain name has informed the Center that it is merely a service provider for the disputed domain name. A third party company, Tetra Pak World Inc, has communicated with the Center providing evidence that it was incorporated in New York on April 10, 2023, and claiming to be the owner of the disputed domain name. See further under section 5B below. In these circumstances, references to “the Respondent” in this decision should be treated as including Tetra Pak World Inc.

As of April 29, 2024, the disputed domain name resolved to a website branded “TETRA PAK WORLD” purporting to offer spare parts for the Complainant’s products, and with a logo comprising the stylised letters “TP” within an upside-down triangle superimposed on a circle device. The site included photos of packaged products whose labels included the Complainant’s exact logo, comprising a triangular device and the term “Tetra Pak” plus the “R” symbol. At least one of the labels included a 2023 use-before date.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends, amongst other things, that the spare parts on the Respondent’s website are not authentic and contain “shortcomings that can lead to devastating consequences”.

B. Respondent

The Respondent did not reply formally to the Complainant’s contentions. However, in an informal email to the Center, the Respondent stated the following:

- the Respondent has no affiliation or relationship with the Complainant or with “Hasty Engineers”, which is wrongly identified as the registrant in the Whois information for the disputed domain name;
- the Respondent lacked bad faith because, at the time of registering the disputed domain name, the Respondent was unaware that using a similar domain name could lead to legal issues or a perception of bad faith;
- the Respondent did not intend to infringe the Complainant’s trade mark or mislead consumers; and
- the Respondent is willing to include a visible disclaimer on its home page making clear that that the Respondent is not connected with the Complainant and is open to further discussions to resolve this matter amicably.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

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

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, "world") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

As to paragraph 4(c)(i) of the Policy, the Respondent is purporting to offer a service that is an adjunct to the Complainant's own service, namely the supply of spare parts for the Complainant's products. In the Panel's view, it is appropriate to approach this as a reseller/distributor case. The consensus view of UDRP panels is that to establish a bona fide offering of goods or services in such circumstances, a respondent must comply with certain conditions (the "Oki Data requirements"). [WIPO Overview 3.0](#), section 2.8.

In this case, the Panel considers that the Respondent has failed to comply with the Oki Data requirement to accurately and prominently disclose the Respondent's relationship with the trade mark holder, as discussed in section 6C below.

Furthermore, the disputed domain name comprises the Complainant's distinctive mark plus the kind of neutral descriptive term ("world") that may be seen as tending to suggest sponsorship or endorsement by the trade mark owner. [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel considers that the Respondent's use of the disputed domain name cannot be said to be bona fide.

As to paragraph 4(c)(ii) of the Policy, while the Respondent's corporate name Tetra Pak World Inc reflects the disputed domain name, the Panel notes that this company was apparently incorporated 12 months after the disputed domain name was registered and that the circumstances generally indicate that the Respondent adopted its name specifically to take unfair advantage of the Complainant's rights. See further under section 6C below. Accordingly, the Panel considers that paragraph 4(c)(ii) of the Policy does not apply.

Nor is there any evidence that paragraph 4(c)(iii) of the Policy is relevant in the circumstances of this case.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel considers that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trade mark in accordance with paragraph 4(b)(iv) of the Policy.

First, the disputed domain name includes the Complainant's distinctive mark together with the neutral descriptive term "world", which contains no indication that the Respondent is unconnected with the Complainant.

Second, not only does the Respondent's website contain no disclaimer, but it is branded prominently with a name reflecting the Complainant's mark plus a logo with a triangular element that is likely intended to evoke the Complainant's logo.

Third, the Respondent's website includes photos of packaged products labelled with the Complainant's exact logo.

Fourth, the Respondent has not contested the Complainant's assertion that the Respondent is not selling "authentic" products. In any case, the Respondent is purporting to offer for sale products which bear an expired "use before" date, and the Respondent has not disputed the Complainant's submission as to the potentially "devastating consequences" of so doing.

While the Respondent claims that it was allegedly unaware at the time of registration that "using a similar domain name" could lead to a perception of bad faith, for the reasons explained above, the Panel considers that, in selecting a domain name comprising the Complainant's distinctive mark plus the neutral descriptive term "world", the Respondent set out to falsely imply that it was officially connected with the Respondent. This conclusion is reinforced by the manner in which the Respondent has used the disputed domain name, as discussed above.

The Respondent's belated offer of a disclaimer cannot retrospectively cure its previous bad faith use and, indeed, could be seen as an admission that its previous use was illicit.

The Panel finds that the Complainant has established the third element 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 <tetrapakworld.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: July 8, 2024