

ADMINISTRATIVE PANEL DECISION

Tetra Laval Holdings & Finance S.A. v. Amirhassan Kamrava
Case No. D2022-1083

1. The Parties

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

The Respondent is Amirhassan Kamrava, United States of America.

2. The Domain Name and Registrar

The disputed domain name <tetrapakeg.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 29, 2022. On March 30, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 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 March 30, 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 April 3, 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 April 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 25, 2022.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on April 27, 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, part of a multinational food processing and packaging group founded in 1947 that operates under the trademark TETRA PAK.

The TETRA PAK trademark was registered by the Complainant in numerous regions of the world, such as in Sweden (registration number 71196, obtained on 1951) and in the United States (registration number 580,219, obtained on 1953).

The Complainant is also the holder of dozens of domain names encompassing the TETRA PAK trademark, including <tetrapak.com>, registered in 1993.

The Respondent registered the disputed domain name <tetrapakeg.com> on May 18, 2020.

The Panel accessed the disputed domain name on May 13, 2022, at which time the disputed domain name was not pointing to any active webpage. However, the Complainant showed that the Respondent has used the disputed domain name to set up email services.

5. Parties' Contentions

A. Complainant

The Complainant makes the following contentions:

- The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The disputed domain name is confusingly similar to the Complainant's trademark and trade name TETRA PAK as the disputed domain name incorporates the entirety of the well-known trademark and trade name TETRA PAK followed by the country code for Egypt "eg" and the gTLD "com". The addition of the suffix "eg" does not impact the overall impression of the dominant part of the name TETRA PAK and hence is not sufficient to overcome the confusingly similarity with respect to the Complainant's TETRA PAK trademark which remains the dominant and only distinctive element in the disputed domain name.

Considering the brand awareness of the trademark TETRA PAK worldwide, an Internet user or an email recipient would most probably assume a connection with or endorsement from the Complainant and its business when seeking information on a website with the disputed domain name or receiving an email with an address "@tetrapakeg.com".

- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated or related to the Complainant in any way, or licensed or otherwise authorized to use the TETRA PAK mark in connection with a website, email communication or for any other purpose. The Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services, is not generally known by the disputed domain name and has not acquired any trademark or service mark rights in that name or mark. The disputed domain name does not resolve to an active website. The configuration of MX records for email is additionally indicative of probable use of the domain name for the purpose of impersonating the Complainant and misleading Internet users.

- The disputed domain name was registered and is being used in bad faith. It is apparent from the composition of the disputed domain name that the Respondent must have known of the Complainant's trademark TETRA PAK and its business in general and in particular in Egypt. That being so, the Respondent could not have chosen or subsequently used the word "tetrapak" for any reason than to trade-off the goodwill and reputation of Complainant's trademark or otherwise create a false association, sponsorship or endorsement with the Complainant. There is no evidence of good faith use of the domain name by the Respondent. On the contrary, the Respondent is passively holding the disputed domain name that incorporates the Complainant's well-known TETRA PAK mark. MX-records are set up for the disputed domain name and the Respondent is most probably using the disputed domain name in connection with

email activities. The Complainant strongly believes that the Respondent's intention is to confuse email recipients and misleadingly give an impression of connection with the Complainant. Hence, the disputed domain name was registered with a deliberate intent to create an impression of an association with the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

- (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

Annexes D and E to the Complaint show trademark registrations for TETRA PAK obtained by the Complainant as early as in 1951.

The disputed domain name differs from the Complainant's trademark TETRA PAK by the addition of the suffix "eg" (common acronym for Egypt), as well as the gTLD ".com".

Previous UDRP decisions have found that the mere addition of descriptive/geographical terms to a trademark in a domain name do not avoid a finding of confusing similarity. This has been held in many UDRP cases (see, e.g., *Inter-IKEA Systems B.V. v. Evezon Co. Ltd.*, WIPO Case No. [D2000-0437](#); *The British Broadcasting Corporation v. Jaime Renteria*, WIPO Case No. [D2000-0050](#); *Volvo Trademark Holding AB v. SC-RAD Inc.*, WIPO Case No. [D2003-0601](#); *Wal-Mart Stores, Inc. v. Lars Stork*, WIPO Case No. [D2000-0628](#); *America Online, Inc. v. Dolphin@Heart*, WIPO Case No. [D2000-0713](#); *AltaVista Company v. S. M. A., Inc.*, WIPO Case No. [D2000-0927](#)).

It is also already well established that the addition of a gTLD such as ".com" is typically irrelevant when determining whether a domain name is confusingly similar to a complainant's trademark.

As a result, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, and that the Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides some examples without limitation of how a respondent can demonstrate a right or legitimate interest in a domain name:

- (i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name; 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 at issue.

Based on the Respondent's default and on the *prima facie* evidence in the Complaint, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has not licensed or authorized the usage of its trademarks to the Respondent, and it does not appear from the present record that the Respondent is commonly known by the disputed domain name.

The Panel also notes that the present record provides no evidence to demonstrate the Respondent's intent to use or to make preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Indeed, the Complainant showed that the Respondent has used the disputed domain name to set up email services. Any email message with the extension "@tetrapakeg.com" could erroneously be interpreted as coming from the Complainant.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent 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 its website or location or of a product or service on its website or location.

When the disputed domain name was registered by the Respondent in 2020, the trademark TETRA PAK was already directly connected to the Complainant's well known products.

Besides the gTLD ".com", the disputed domain name is comprised of the Complainant's trademark TETRA PAK and of the common acronym for Egypt ("Eg"). The Respondent has not provided any justification for the registration of a domain name containing a famous third-party trademark and a reference to such country.

Therefore, the Panel concludes that it would not be feasible to consider that the Respondent – at the time of the registration of the disputed domain name – could not have been aware of the Complainant's trademark, as well as that the adoption of the expression "tetrapakeg" could be a mere coincidence.

Currently, there is no active website linked to the disputed domain name, but this is not enough to avoid the Panel's findings that the disputed domain name is also being used in bad faith.

In the Panel's view, the circumstances that the Respondent is, (a) not presently using the disputed domain name; (b) not indicating any intention to use it; and (c) not at least providing justifications for the registration of a domain name containing a famous third-party trademark, certainly cannot be used in benefit of the Respondent in the present case.

Furthermore, in the Panel's view, (d) the circumstance that MX-records were set up for the disputed domain name and that the Respondent is probably using the disputed domain name in connection with email activities that may confuse recipients as to its real source is enough to support a finding of bad faith registration and use of the disputed domain name by the Respondent in the present case.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith, and the Complainant has also satisfied 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 <tetrapakeg.com> be transferred to the Complainant.

/Rodrigo Azevedo/

Rodrigo Azevedo

Sole Panelist

Date: May 11, 2022