

## **ADMINISTRATIVE PANEL DECISION**

Tetra Laval Holdings & Finance S.A. v. Johnson Zhang  
Case No. D2022-2424

### **1. The Parties**

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

The Respondent is Johnson Zhang, Singapore.

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

The disputed domain name <tertapak.com> is registered with Realtime Register B.V. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 6, 2022. On July 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 7, 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 July 7, 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 July 7, 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 July 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 3, 2022.

The Center appointed Martin Schwimmer as the sole panelist in this matter on August 17, 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 Tetra Laval Holdings & Finance S.A., a Swiss company which is part of the Tetra Laval Group. The Tetra Laval Group consists of three groups: Tetra Pak, DeLaval, and Sidel Group. Tetra Pak is a multinational food processing and packaging company founded in 1947 in Sweden. It employs more than 25,000 people in more than 160 countries.

The Complainant owns several trademarks in multiple jurisdictions with more than 1,500 registrations, including the Swedish Trademark Registration no. 71196 for TETRA PAK, registered in 1951; European Union Trademark (EUTM) Registration no. 001202522 for TETRA PAK, registered in 2000; and the United States of America Trademark registrations nos. 0586480 and 0580219 for TETRA PAK, registered in 1954 and 1953, respectively.

The Complainant also owns more than 300 domain names consisting of the mark TETRA PAK, covering both generic Top-Level Domains (“gTLDs”) and country code Top-Level Domains (“ccTLDs”), including the domain name <tetrapak.com>.

The disputed domain name was registered on June 1, 2022. It resolves to a website displaying pornographic materials and links to gambling materials.

#### **5. Parties’ Contentions**

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

The Complainant asserts that the fame of TETRA PAK trademark has been confirmed in several previous UDRP cases and that the reputation associated with the Complainant’s mark is excellent due to the quality of the Complainant’s goods and services.

According to the Complainant, the disputed domain name is a deliberate misspelling of the Complainant’s well known trademark and trade name TETRA PAK. The inversion of the letters “t” and “r” does not sufficiently distinguish the disputed domain name from the Complainant’s mark, and is hardly noticeable, is clearly deliberate, and represents a classic instance of typosquatting with the intention to confuse Internet users.

The Respondent is using the disputed domain name to display pornographic material accompanied by advertisements for various services, including gambling.

The Complainant alleges that the Respondent is not affiliated or related to the Complainant in any way nor licensed or authorized to use TETRA PAK in connection with a website, email communication, or for any other purpose. In addition, the Respondent is not known by the disputed domain name and has not acquired any trademark rights in that name.

The Respondent’s tarnishing use in connection with pornography is not a *bona fide* offering of goods or services and/or a legitimate noncommercial or fair use of the disputed domain name.

It is apparent from the composition of the disputed domain name that the Respondent must have known of the Complainant’s trademarks and its reputation. The Respondent’s motivation must have been to trade-off the goodwill of the Complainant.

Finally, the Complainant requests the transfer of the disputed domain name.

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

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The evidence presented in the Complaint demonstrates that the Complainant is the owner of numerous trademark registrations for TETRA PAK around the world, as well as of many domain names comprising TETRA PAK. Its use of the trademark is demonstrated at “www.tetrapak.com”.

The string “tertapak” is a misspelling of the Complainant’s well known TETRA PAK trademark.

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9, states: “[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”

Additionally, it is well established that a gTLD, in this case “.com”, is typically irrelevant to the consideration of identity or confusing similarity between a trademark and a domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the aforementioned trademark for the purpose of the UDRP, and therefore the first requirement is met under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production onto the Respondent to demonstrate its rights or legitimate interests, with the burden of proof remaining on the Complainant. The Respondent has not submitted a response to the Complaint to rebut this *prima facie* case.

The Panel notes the following:

- There is no evidence that the Respondent has any authorization to use the Complainant’s trademark or to register domain names containing the trademark TETRA PAK.
- There is no evidence that the Respondent is commonly known by the disputed domain name.
- There is also no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or that before any notice of the dispute the Respondent has made use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

Instead, the Complainant submitted evidence that the disputed domain name was being used in connection with a website displaying pornography and advertisements, none of which refers to TETRA PAK or TERTA PAK.

In view of the unrebutted evidence above, such use cannot confer rights or legitimate interests on the Respondent. See section 2.13 of the [WIPO Overview 3.0](#).

For the above reasons, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied, *i.e.*, the Respondent has no rights or legitimate interests in the disputed domain name.

### C. Registered and Used in Bad Faith

The Complainant easily established that its TETRA PAK mark is well known. It is not conceivable that the Respondent would not have been aware of the Complainant’s distinctive and well known trademark at the time of the registration of the disputed domain name.

The disputed domain name reproduces the famous TETRA PAK mark with the intentional inversion of the letters “t” and “r” (which letters are next to each other on the common QWERTY keyboard, and therefore more likely to be inverted when typing than other two-letter combinations) to confuse and/or deceive Internet users.

The Respondent’s intention was certainly to create a likelihood of confusion among Internet users for any commercial gain, such as the diversion of traffic to the Respondent’s website, which website displayed pornography and advertisements for, among other services, gambling.

The use of a domain name to divert traffic to a website displaying pornography has been found to constitute bad faith use. See, e.g., *Valvoline Licensing and Intellectual Property LLC v. Andrei Arhipov*, WIPO Case No. [D2017-2453](#) (“The fact that the website at the disputed domain name provides adult sexually explicit content with pornography elements is a clear indication that the domain name has been registered and used in bad faith.”).

For the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, the disputed domain name has been registered and is being used in bad faith.

## **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, <tertapak.com>, be transferred to the Complainant.

*/Martin Schwimmer/*

**Martin Schwimmer**

Sole Panelist

Date: August 25, 2022