

## **ADMINISTRATIVE PANEL DECISION**

TEVA Pharmaceutical Industries Limited v. Sandra Porfirio,  
Teva Pharmaceutical  
Case No. D2023-4189

### **1. The Parties**

The Complainant is TEVA Pharmaceutical Industries Limited, Israel, represented by SILKA AB, Sweden.

The Respondent is Sandra Porfirio, Teva Pharmaceutical, United States of America ("United States").

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

The Disputed Domain Name <tevapharmaceuticall.com> is registered with Squarespace Domains II LLC (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 9, 2023. On October 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 10, 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 715157251) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 13, 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 October 18, 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 October 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 8, 2023.

The Center appointed Mireille Buydens as the sole panelist in this matter on December 26, 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 has been operating since 1901 and currently operates in sixty countries and is ranked amongst the top pharmaceutical companies in the world.

The Complainant has a large portfolio of trademark registrations consisting of TEVA in many countries and territories worldwide (including a large number of registrations in the United States), mostly under class 5 for pharmaceutical products. These registrations include (the “Trademark”):

- International trademark registration No. 1319184, registered on June 15, 2016, for TEVA (word and figurative), in class 5, 10 and 42, and covering many countries around the globe;
- United States Trademark Registration No 5991395 February 18, 2020 for TEVA (word with figurative elements), in class 44 (medical services);
- United States trademark registration no. 2353386, registered on May 30, 2000, for TEVA (word with visual elements) in class 5 for pharmaceutical products
- European Union Trademark Registration no. 018285645 for TEVAPHARM registered on January 9, 2021, in classes 5 and 44;
- Chinese trademark registration no. 19691159A for TEVA (word and visual elements) registered on July 7 2017 in class 35;

In addition, the Complainant owns and operates its official website at “www.tevapharm.com”. The Complainant also owns various domain names which are (very) similar to the Disputed Domain Name, including <tevapharmaceutical.info>, <teva-pharmaceutical.com> and <tevapharmaceuticals.org>.

The Disputed Domain Name <tevapharmaceuticall.com> was registered on September 16, 2023. The Disputed Domain Name is passively held. At the date of this decision, the panel found that the Disputed Domain Name directs to a page mentioning “this site can’t be reached”.

#### 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.

First, the Complainant asserts that it owns hundreds of registrations for the Trademark all over the globe. The Complainant considers that the Disputed Domain Name is confusingly similar to the Complainant’s Trademark as it includes an exact reproduction of the Complainant’s Trademark. The addition of the generic Top-Level Domain (“gTLD”) “.com” should be disregarded.

Second, the Complainant asserts that the Respondent lacks rights or legitimate interests in the Disputed Domain Name. In consideration of the history and size of the Complainant’s business using it’s the Trademark, it is highly unlikely that the Respondent would not have known of the Complainant’s rights in the Trademark at the time of the Disputed Domain Name’s registration. Further, the Complainant has not licensed or otherwise authorized the Respondent to register or make use of the Disputed Domain Name. The Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Name as the use of the Trademark along with the keyword ‘Pharmaceuticall’ (*typo for ‘Pharmaceutical’*) clearly refers to the Complainant’s corporate name and the specific industry (‘Pharmaceutical’), where it operates.

The Respondent is not using the Disputed Domain Name in connection with a *bona fide* offering of goods or services as it simply refers to an inactive page (passive holding). The Complainant further asserts that the Respondent's activation of the MX records for the Disputed Domain Name would be a clear case of cyber-squatting as it shows that the Respondent's intention is to send and receive emails using the Disputed Domain Name for phishing or other fraudulent purposes, taking advantage of the Complainant's reputation and goodwill in order to cause confusion and mislead the public.

Third, the Complainant asserts that the Disputed Domain Name was registered and is being used in bad faith. The Complainant submits that the Trademark (which predates the registration of the Disputed Domain Name) is so well-known worldwide that it is inconceivable that the Respondent ignored the Complainant and its earlier rights when it registered the Disputed Domain Name (which includes the Complainant's Trademark along with a descriptive term referring to the Complainant's activity and corporate name). The Complainant further points out that a preliminary search over the Internet or survey among the public in general reveals that "TEVA Pharmaceutical" is associated with the Complainant and similar terms have been in use by the Complainant for decades. The Respondent, who (deliberately) failed to search and/or screen registrations against available online databases, is responsible for any resulting registrations under the concept of willful blindness.

The Complainant also explains that it owns various similar domain names, all incorporating its Trademark combined with keywords such as 'Pharm' or 'Pharmaceutical'. Hence, any individual coming across the Disputed Domain Name or an associated email ID ending with "@tevapharmaceuticall.com" may assume it to be the Complainant's website/email and instantly associate the same with the Complainant.

Finally, the Complainant submits that the Disputed Domain Name resolves to an inactive website. The Complainant asserts that the passive holding of the Disputed Domain Name amounts to use in bad faith because, notably (i) the Trademark is well-known, (2) the Respondent has not provided any answer to the Complainant's Contentions, (3) the disputed Domain Name has been set up with MX records, which poses a threat of an abusive use of the disputed Domain Name by the Respondent through impersonation of the Complainant and (4) one cannot see any plausible good faith use of the Disputed Domain Name.

The Complaint seeks that the Disputed Domain Name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Dealing with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements to succeed in its Complaint:

- (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

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 Trademark and the Disputed Domain Name. See 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 the Trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trademark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the Trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here the term "pharmaceuticall") 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 Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The gTLD ".com" is a standard registration requirement and does not prevent the Disputed Domain Name from being confusingly similar to the Trademark. [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, 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 recognized 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.

The Respondent is not licensed by or affiliated with the Complainant in any way. There is no evidence that the Respondent would be commonly known under the Disputed Domain Name, nor is there any evidence of use or demonstrable plans to use the Disputed Domain Name for a *bona fide* offering of goods or services. There is no evidence of legitimate noncommercial or fair use of the Disputed Domain Name, either.

The Panel notes that the composition of the Disputed Domain Name carries a risk of implied affiliation with the Complainant (see [WIPO Overview 3.0](#), section 2.5.1). The composition of the Disputed Domain Name, adding the term "pharmaceuticall" (which is, with a typo, a reference to the Complainant's corporate name as well as a to the pharmaceutical industry in which the Complainant is active for decades) to the Complainant's Trademark along with the gTLD ".com", affirms the Respondent's intention of taking unfair advantage of the

likelihood of confusion between the Disputed Domain Name and the Complainant's Trademark and corporate name. This confirms that there is no use, nor preparations to use, of the Disputed Domain Name in connection with a *bona fide* offering of goods or services, and thus no legitimate interest in the Disputed Domain Name.

Based on the available record, 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 notes that, given that the Disputed Domain Name incorporates the Complainant's well-known Trademark, which predates the registration of the Disputed Domain Name, with the addition of the term "pharmaceuticall" (which refers, with a typo, to the Complainant's corporate name and its area of business), the Respondent was more likely than not aware of the Complainant's Trademark at the time of the registration of the Disputed Domain Name ([WIPO Overview 3.0](#) section 3.1.4). The Panel notes in this regard that the Complainant owns registrations for the Trademark and is carrying business in the United States, where the Respondent is located. Besides, the Complainant owns various domain names which are highly similar to the Disputed Domain Name (including <tevapharmaceutical.info>, <teva-pharmaceutical.com> and <tevapharmaceuticals.org>). The Respondent should have known about the Complainant's rights, as such knowledge is readily obtainable through a simple browser search (See *Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis Inc.*, WIPO Case No. [D2009-0462](#)). Furthermore, the Respondent could have conducted a trademark search and would have found the Complainant's prior registrations in respect of the Trademark (*Citrix Online LLC v. Ramalinga Reddy Sanikommu Venkata*, WIPO Case No. [D2012-1338](#)).

The Panel finds the Complainant's Trademark to be distinctive and to have gained widespread international recognition in connection with the Complainant's pharmaceutical business. In the circumstances, and in the absence of any explanation from the Respondent for its choice of the Disputed Domain Name, the Panel can only reasonably infer that the Respondent registered the Disputed Domain Name in the knowledge of the Complainant's Trademark and with the intention of taking unfair advantage of the goodwill attached to it by causing confusion among Internet users. The Panel notes in this regard that, when looking for "tevapharmaceuticall" on the Internet, Internet users are referred to pages belonging to the Complainant. The Respondent has sought to create a misleading impression of association with the Complainant.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

In this respect, the Panel notes the distinctiveness and reputation of the Complainant's Trademark and the composition of the Disputed Domain Name, the failure of the Respondent to submit a response and the Respondent's concealing its identity. The Panel finds that in the circumstances of this case, the passive holding of the Disputed Domain Name does not prevent a finding of bad faith under the Policy.

Based on the available record, 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 <tevapharmaceuticall.com> be transferred to the Complainant.

*/Mireille Buydens/*

**Mireille Buydens**

Sole Panelist

Date: January 18, 2024