

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Limited v. Contact Privacy Inc. Customer
0164082050 / Milen Radumilo
Case No. D2022-1736

1. The Parties

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

Respondent is Contact Privacy Inc. Customer 0164082050, Canada / Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <tevaphar.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 May 12, 2022. On May 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 13, 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 Complainant on May 17, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on May 18, 2022.

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 May 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 9, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 11, 2022.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on June 20, 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

Complainant is owner of registration of the word (typed drawing) trademark TEVA on the Principal Register of the United States Patent and Trademark Office (USPTO), registration number 1567918, registration dated November 28, 1989, in international class (IC) 5, covering pharmaceutical, veterinary and sanitary preparations. Complainant is owner of registration of the word and device trademark TEVA as an International Trademark under the Madrid System, registration number 1319184, registration dated June 15, 2016, with over 50 country designations. Complainant also is owner of registration for the word trademark TEVAPHARM on the register of the European Union Intellectual Property Office (EUIPO), registration number 018285645, registration dated January 9, 2021, in ICs 5 and 44, covering, *inter alia*, pharmaceutical preparations and consulting services in the field of pharmaceuticals.

Complainant is a multinational pharmaceutical company supplying the largest volume of generic pharmaceutical products worldwide, as well as developing and supplying originator products. Complainant operates in more than 60 countries and employs approximately 45,000 individuals. Complainant operates a commercial website at "www.tevapharm.com".

According to the Registrar's verification, Respondent is registrant of the disputed domain name. According to a Whois Search report provided by Complainant, the record of registration of the disputed domain name was created on March 31, 2022. There is no evidence on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its creation date.

The disputed domain name has been directed to a pay-per-click (PPC) parking page that includes search links that direct to third-party competitors of Complainant in the pharmaceutical sector. The PPC parking page indicates that the disputed domain name "may be for sale", and a link indicates that Respondent may be offering the disputed domain name for sale at USD 2888.¹

Complainant has provided evidence that Respondent has been found in at least three previous proceedings under the UDRP to have engaged in abusive domain name registration and use. These cases are: (1) *Novartis AG v. Super Privacy Service LTD c/o Dynadot / Milen Radumilo*, WIPO Case No. [D2022-0406](#); (2) *Equifax Inc. v. Milen Radumilo*, WIPO Case No. [D2022-0780](#), and; (3) *Canva Pty Ltd. v. Perfect Privacy LLC / Milen Radumilo*, WIPO Case No. [D2022-0351](#).

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

5. Parties' Contentions

A. Complainant

Complainant alleges that it owns rights in the trademarks TEVA and TEVAPHARM as evidenced by registration at various trademark offices, and by use in commerce. Complainant argues that the disputed domain name is confusingly similar to its TEVA and TEVAPHARM trademarks.

¹ A screenshot of the broker offering provided by Complainant is in Swedish. It is not clear whether the disputed domain name is being definitively offered at a set price, or whether the indicated price is a suggestion from the domain name broker. Google translate from Swedish to English for "är tillgänglig" used in the offering returns "is available". Panel visit of July 1, 2022.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent has not used the disputed domain name in good faith or for a noncommercial activity; (2) Respondent has attempted to unfairly capitalize on the reputation and goodwill of Complainant; (3) Complainant considers it highly unlikely that Respondent intended to use the disputed domain name for any legitimate or fair use, and cannot conceive of any possible situation in which the use of the disputed domain name would not infringe Complainant's rights in its trademarks.

Complainant argues that Respondent registered and is using the disputed domain name in bad faith because: (1) Complainant registered and used its trademarks prior to Respondent's registration of the disputed domain name; (2) Respondent's use of the disputed domain name to direct Internet users to a PPC parking page with links to third-party competitors constitutes intentionally attempting to attract Internet users for commercial gain by creating confusion as to Complainant's association with Respondent's website; (3) directing Internet users to a domain name broker offering the disputed domain name for sale indicates that Respondent registered the disputed domain name for the purpose of selling it for valuable consideration in excess of its out-of-pocket expenses, and; (4) Respondent has engaged in a pattern or practice of abusively registering and using trademarks of third parties.

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, *e.g.*, Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. There is no indication of difficulties in the transmission to Respondent of email. Courier delivery of the Complaint to Respondent could not be successfully completed because of inaccurate address information in its record registration, although courier delivery was successfully completed to Respondent's privacy shield provider. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

A. Identical or Confusingly Similar

Complainant has provided substantial evidence of rights in the trademark TEVA, including by registration at

the USPTO and as an International Trademark, and through use in commerce (see Factual Background supra). Complainant has also provided substantial evidence of rights in the trademark TEVAPHARM, including by registration at the EUIPO through use in commerce. Complainant has not challenged Complainant's assertion of trademark rights. The Panel determines that Complainant owns rights in the trademarks TEVA and TEVAPHARM.

The disputed domain name directly and fully incorporates Complainant's TEVA trademark. The direct and full incorporation of Complainant's trademark by Respondent in the disputed domain name is sufficient to establish confusing similarity within the meaning of the Policy. In addition, the disputed domain name directly and fully incorporates Complainant's TEVAPHARM trademark, dropping the final letter "m". Where, as here, a single letter of Complainant's trademark is not included in the disputed domain name, this does not preclude a finding of confusing similarity. The visual impression of the disputed domain name maintains a high level of similarity with Complainant's TEVAPHARM trademark. The Panel determines that the disputed domain name is confusingly similar to Complainant's TEVA and TEVAPHARM trademarks.

Complainant has established that it owns rights in the trademarks TEVA and TEVAPHARM and that the disputed domain name is confusingly similar to those trademarks.

B. Rights or Legitimate Interests

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above in section 5.A, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent has not replied to the Complaint, and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

Respondent's use of the disputed domain name to direct Internet users to a PPC parking page with links to third-party competitors of Complainant does not establish rights or legitimate interests in favor of Respondent. Internet users expecting to visit Complainant's commercial website may be diverted to Respondent's parking page through the confusingly similar disputed domain name, depriving Complainant of web traffic and enriching Respondent through its appropriation of Complainant's goodwill. This does not constitute a *bona fide* offering of goods or services or a fair use of the disputed domain name or Complainant's trademarks.

Respondent's use of the disputed domain name does not otherwise manifest rights or legitimate interests.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include, "(i) circumstances indicating that [the respondent has] registered or [has] 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 that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or (ii) [the respondent has] 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 (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial

gain, Internet users to [the respondent's] 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 [the respondent's] website or location or of a product or service on [the respondent's] website or location".

Complainant's TEVA and TEVAPHARM trademarks were well established internationally when Respondent registered the disputed domain name. It is implausible that Respondent registered the disputed domain name, which is a semantically unique formulation incorporating Complainant's trademarks, without being aware of Complainant and its trademarks. There is little reason to doubt that Respondent was specifically targeting Complainant and its trademarks when it registered the disputed domain name.

Respondent's use of the disputed domain name evidences bad faith in at least three ways. First, Respondent made the disputed domain name available for sale shortly following its registration, suggesting that Respondent registered the disputed domain name with the intention of selling it to a third party for valuable consideration in excess of its out-of-pocket expenses. Second, Respondent has engaged in a pattern or practice of abusively registering and using the trademarks of third parties, as evidenced by the prior UDRP decisions making such findings. Third, Respondent's use of the disputed domain name to direct Internet users to a PPC parking page with links to third-party competitors of Complainant evidences an intent to use the disputed domain name for commercial gain by creating confusion as to whether Complainant is the source, sponsor or affiliate of Respondent's PPC parking page.

The Panel finds that Complainant has demonstrated that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b) 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, <tevaphar.com>, be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: July 1, 2022