

## **ADMINISTRATIVE PANEL DECISION**

TEVA Pharmaceutical Industries Limited v. Privacy service provided by Withheld for Privacy ehf / Oren Harrison, Pacific States Insulation and Acoustical Contracting Inc.

Case No. D2022-1977

### **1. The Parties**

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Oren Harrison, Pacific States Insulation and Acoustical Contracting Inc., United States of America ("United States").

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

The disputed domain name <tevapharm.careers> is registered with NameCheap, Inc. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 31, 2022. On June 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 1, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming the disputed domain name is registered with it;
- (b) confirming the language of the registration agreement is English; and
- (c) 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 June 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 amendment to the Complaint on June 9, 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 June 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2022. A communication from a Third Party was filed with the Center on July 4, 2022. The Commencement of Panel Appointment Process was sent to the Parties on July 12, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on July 28, 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 first company in what is now the TEVA corporate group was incorporated in 1901. The Complainant has its global headquarters in Israel. It is listed on the New York Stock Exchange and also the Tel Aviv Stock Exchange. The Complainant and its corporate group operate in 60 countries around the world. According to the Complaint, the Complainant’s group is the largest supplier of generic medicines in the world. In addition to its range of generic medicines, it also produces and markets a range of speciality medicines as well. The website linked in the Complaint claims that the Complainant’s group is the 15<sup>th</sup> largest pharmaceuticals group in the world.

The Complainant proudly boasts that nearly 200 million people around the world take one of its products every day.

According to its LinkedIn profile, linked in the Complaint, the Complainant has some 25,000 employees and its LinkedIn account has over 920,000 followers.

The Complaint includes evidence that the Complainant holds an extensive portfolio of trademark registrations for TEVA in International Classes 3, and 5. These include:

- (a) Israel Registered Trademark No. 41075 which was registered on August 5, 1975;
- (b) United States Registered Trademark No. 1,567,918 which was registered on November 28, 1989; and
- (c) European Union Registered Trademark No. 000115394 (stylised version) which has been registered since April 1, 1996.

The Complaint also includes evidence of numerous other registrations in European, Asian and Pacific countries.

Amongst other things, the Complainant promotes its products and services from a website to which the domain name <tevapharm.com> resolves.

The disputed domain name was registered on May 18, 2022.

It redirects to the Complainant’s website.

In addition, mail exchanger (“MX”) records for the disputed domain name actively point to Google Mail servers.

## 5. Discussion and Findings

It is not clear whether the communication from Mr. Sims is in fact from the Respondent<sup>1</sup> as Mr Sims is not the individual named as the registrant contact in the Whois record. Mr. Sims describes himself as the President of the Respondent. However, he failed to respond to the Center's request for further information. His communication to the Center stated (omitting formal parts):

"This filing is unjust and not right. The person or entity that has filed this claim is a bad actor. My company had a website that was hacked, and, in the process, I decided to eliminate any footprint that my company had on the web. The domain name we used was my company acronym. However, since we were hacked, I have chosen not to continue to do business with the keepers of my website.

This dispute that has been file [sic] is a form of fraud and should be dismissed."

If Mr. Sims does not represent the Respondent, then no formal Response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

In either case, therefore, paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

It is sufficient for present purposes to record that the Complainant has proven ownership of numerous registered trademarks for TEVA.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant,

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<sup>1</sup> As the first-named Respondent is a privacy service, the Panel will refer to the third-named Respondent as the Respondent unless the context requires the contrary.

may fall for consideration under the other elements of the Policy. See e.g. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the generic Top Level Domain (gTLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the “.careers” gTLD, the disputed domain name consists of the Complainant’s registered trademark and the term “pharm”. As this requirement under the Policy is essentially a standing requirement, the addition of such descriptive or geographical terms does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant’s trademark remains visually and aurally recognisable within the disputed domain name.

Although it is not strictly necessary, the Panel notes also that “tevapharm” is the second level component of the domain name which the Complainant uses for its website. The second level component of the disputed domain name is of course identical to that.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant’s trademark and the requirement under the first limb of the Policy is satisfied.

## **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] 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; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name long after the Complainant began using its trademark and also well after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

Although Mr. Sims states that the disputed domain name was his company's acronym, the disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

The disputed domain name does redirect to the Complainant's website which suggests, falsely, some sort of association or connection with the Complainant. Significantly, the configured MX records pointing to active Gmail accounts indicate that the disputed domain name is being used in connection with email communications. These are not authorised by or connected with the Complainant. Given the content of the disputed domain name, however, emails from such an account would at the very least misrepresent that the account holder was from, or associated with, the Complainant. That risk of association is reinforced by the redirection of the disputed domain name to the Complainant's website.

The Complainant plausibly contends that the activation of the MX records indicates the associated email address(es) is being used for phishing or some other fraudulent purpose. Such conduct cannot qualify as a right or legitimate purpose under the Policy. See e.g. [WIPO Overview 3.0](#), section 2.1.3.1 and specifically in the context of phishing *Accuity, Inc. v. Kenneth Hunter*, WIPO Case No. [D2022-0397](#).

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation or justification. Mr. Sims' explanation falls far short of that. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

### **C. Registered and Used in Bad Faith**

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Paragraph 4(b) identifies situations which may demonstrate that registration or use of a disputed domain name was not in bad faith under the Policy:

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 [the disputed] domain name in bad faith:

(i) circumstances indicating that [the Respondent] has registered or [the Respondent has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [disputed] domain name; or

(ii) [the Respondent has] registered the [disputed] 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 [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site or other on-line 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] web site or

location.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

In the present case, the Complainant is part of a large global corporate group operating around the world under the name “Teva” and which has been so operating for very many years. Apparently, “teva” means “nature” in Hebrew. Despite Mr. Sims’ claim, however, there is nothing in the corporate Respondent’s name which suggests a connection either with “nature” or “teva”. Nor does its corporate name, which references the provision of contracting for insulation and contracting services, suggest any association with the pharmaceutical industry.

In these circumstances, therefore, the Panel accepts that there is a very strong inference the Respondent registered the disputed domain name with knowledge of the Complainant (or its corporate group) and trademark to take advantage of its significance as the Complainant’s trademark.

The registration of the disputed domain name, which falsely represents an association with the Complainant with that knowledge constitutes registration in bad faith under the Policy. Furthermore, for the reasons discussed in section 5B above, the way the Respondent is using the disputed domain name constitutes use in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

## **6. 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, <tevapharm.careers>, be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: August 11, 2022