

ADMINISTRATIVE PANEL DECISION

TEVA Pharmaceuticals International GmbH v. Privacy Protection/Michael Nava /or Domain Nerdz LLC
Case No. D2022-2266

1. The Parties

The Complainant is TEVA Pharmaceuticals International GmbH, Switzerland, represented by SILKA AB, Sweden.

The Respondent is Privacy Protection/Michael Nava /or Domain Nerdz LLC, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <qvar.net> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 23, 2022. On June 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 23, 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 5, 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 July 5, 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 July 7, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 4, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on August 22, 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 part of the Teva group of companies, a large global producer and supplier of generic medicines. In 2005, as a result of its acquisition of another pharmaceutical company, the Complainant acquired the rights in a respiratory product, previously launched in international markets, namely the “QVAR Inhaler”, which was used to help prevent asthma attacks. In 2018, the Complainant replaced the QVAR Inhaler with a new product, branded as the “QVAR RediHaler”.

The Complainant has registered, and acquired through acquisition, many trade marks for QVAR, the earliest cited marks being dated 1994. These marks include, by way of example only, European Trade Mark, registration number 017940154, in class 5, registered on December 27, 2018. The Complainant also owns the domain name <qvar.com>, which resolves to a website containing information about the QVAR RediHaler.

The disputed domain name was registered on February 8, 2022. As at the date of filing the Complaint, it resolved to a webpage on which it was offered for sale at a price of USD 2,988. The price at which the disputed domain name is presently, offered for sale on the Respondent’s webpage is USD 1,988.

5. Parties’ Contentions

A. Complainant

The Complainant says the disputed domain name is identical or confusingly similar to a trade mark in which it has rights, in that it wholly incorporates its QVAR mark.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is neither a licensee nor an authorized agent of the Complainant and has no authority to use its QVAR mark. The offering for sale of the disputed domain name does not comprise a *bona fide* offering of goods and services, nor is there any evidence that the Respondent has made demonstrable preparations to use the disputed domain name for such an offering, nor is the Respondent making a legitimate noncommercial or fair use of it. The Respondent does not own a mark for QVAR, nor is it commonly known by this name.

The Complainant says finally that the disputed domain name was registered and is being used in bad faith. Section 3.2.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) states that respondents who deliberately fail to search and/or screen proposed domain name registrations against available online databases may be responsible for any resulting abusive registrations under the concept of willful blindness. Moreover section 3.2.3 of the [WIPO Overview 3.0](#) states that domainers undertaking bulk purchases have an affirmative obligation to avoid the registration of trade mark abusive domain names.

The Complainant’s QVAR mark has been widely used internationally by the Complainant and its predecessor in developing the QVAR inhaler since 1994, and it can therefore be presumed that the Respondent has registered the disputed domain name with knowledge of its mark. Moreover, registration of a complainant’s well-known mark by a party with no affiliation to the complainant suggests opportunistic bad faith.

The Complainant says that the Respondent is selling over 95,000 domain names on a third party website, including <tevapharm.co> and <tevas.net>, both of which are referable to the Complainant, and that it has

been the subject of six adverse decisions under the Policy. Accordingly, bad faith can also be found on the basis that the Respondent has registered the disputed domain name in order to prevent the Complainant from registering its mark in a corresponding domain name, as it has engaged in a pattern of such conduct.

Finally, the fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith use under the doctrine of passive holding.

B. Respondent

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

6. Discussion and Findings

Dealing, first, 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 in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 Complainant has provided details of a number of the registered trade marks it owns for QVAR, including the registration in respect of which full details have been provided above, which thereby establish its rights in this mark.

As a technical requirement of registration, the generic Top Level Domain, that is ".net" in the case of the disputed domain name, is typically disregarded when assessing confusing similarity. The disputed domain name comprises the Complainant's QVAR mark in its entirety, with no additional elements. The Panel therefore finds that the disputed domain name is identical to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation, examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used or prepared to use the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

Doing no more with the disputed domain name than to offer it for sale, does not in the circumstances of this case amount to use in connection with a *bona fide* offering of goods and services, nor does it comprise a legitimate, noncommercial use of it. There is no evidence that the Respondent has been commonly known by the disputed domain name and the second circumstance under paragraph 4(c) of the Policy is therefore inapplicable. Moreover, the identity of the disputed domain name to the Complainant's mark means that it

carries a high risk of implied affiliation with the Complainant, which prevents its use by the Respondent from being considered fair; see *VIOOH Limited / JCDecaux SA v. Aida Ebrahimpour, Mrdomain*, WIPO Case No. [DIR2021-0026](#).

The Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent to show that it does; see section 2.1 of the WIP Overview 3.0 and, for example, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). In the absence of any response from the Respondent, the Respondent has self-evidently failed to satisfy that burden and the Panel accordingly finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

It is not entirely clear to the Panel, that the Respondent is the registrant of the 95,000 domain names which, the Complainant says, the Respondent is offering for sale on a third party website. Nonetheless, it is evident from the earlier decisions under the Policy to which the Respondent has been a party that it has registered many other domain names. The Complainant's QVAR mark is distinctive and, as at the date of its registration of in February 2022, the Complainant or its predecessors had been using it for approximately 28 years. Having regard to the Respondent's registration of other trade-mark abusive domain names, the circumstances point to the Respondent having been aware of the Complainant's mark as at the date of registration and to have registered it in order to take unfair advantage of its repute. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration amounts to bad faith; see, for example, *Accor, SoLuxury HMC v. Huxianfeng*, WIPO Case No. [D2014-1326](#). The Panel therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(i) of the Policy is a respondent has registered or acquired a domain name primarily for the purpose of selling it to the complainant or a competitor of the complainant for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name. The disputed domain name is presently advertised for sale at a price of USD 1,988, which will likely be well in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name. The Respondent's offering for sale of the disputed domain name therefore amounts to bad faith use within the circumstance described at paragraph 4(b)(i) of the Policy; see, for example; *Actavis Group PTC ehf, Actavis Holdco US, INC. v. Michael Nava, Domain Nerdz LLC*, WIPO Case No. [DCO2021-0045](#).

Paragraph 4(b)(ii) of the Policy sets out a further circumstance of bad faith registration and use, namely if a respondent has registered a domain name in order to prevent the trade mark owner from reflecting its mark in a corresponding domain name and the respondent has engaged in a pattern of such conduct. The Complainant has provided details five decisions of earlier UDRP panels, which have found against the personal-named Respondent,¹ each of which appears to concern domain name registrations by him in circumstances which are broadly similar to the circumstances in these proceedings. Accordingly, bad faith registration and use by the Respondent is also established under paragraph 4(b)(ii) of the Policy.

The Panel therefore finds, for the above reasons, that the disputed domain name was registered and is being used in bad faith.

¹ Although the Complainant has asserted that there have been six decisions against the Respondent, one of the case references it has provided refers to a filing against the Respondent which does not appear to have proceeded to a decision.

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 <qvar.net> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: September 5, 2022