

## ADMINISTRATIVE PANEL DECISION

TEVA Pharmaceutical Industries Limited v. 杨智超 (Zhi Chao Yang)  
Case No. D2022-2364

### 1. The Parties

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

The Respondent is 杨智超 (Zhi Chao Yang), China.

### 2. The Domain Name and Registrar

The disputed domain name <tevacanad.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the "Registrar").

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on June 29, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 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 1, 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 in English on July 3, 2022.

On July 1, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On July 3, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese 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 July 28, 2022.


The Center appointed Francine Tan as the sole panelist in this matter on August 3, 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, TEVA Pharmaceutical Industries Limited, was established in 1901 with its global headquarters in Israel. The Complainant operates in 60 countries worldwide. It is ranked among the top pharmaceutical companies in the world, and one of the world's largest generic medicines producers. The Complainant states that it conceived and adopted the TEVA mark in respect of generic medicines since 1975 and has been continuously and extensively using the mark globally since then. In the field of specialty medicines, the Complainant is renowned for innovative treatments for disorders of the central nervous system, including pain, as well as a portfolio of respiratory products.

The Complainant states that its TEVA trade mark is widely recognized and a simple Google search of the term "teva" or "teva canad" would generate a large number of results which pertain to the Complainant and its mark. The Complainant states that it has a huge social media following, especially on LinkedIn.

The Complainant is the owner of hundreds of word and formative trade mark registrations for TEVA, including the following:

- China Trade Mark Registration No. 644291 for TEVA, registered on June 7, 1993;
- China Trade Mark Registration No. 12190529 for TEVA, registered on August 7, 2014; and
- China Trade Mark Registration No. 19691159A for  , registered on July 21, 2017.

The Complainant states that its official website is at <tevapharm.com>, and <tevacanada.com> for the Canadian territory.

The disputed domain name was registered on January 11, 2022, and resolves to a parking page with Pay-Per-Click ("PPC") links showing the link titles "The Medicine Cabinet", "All Medicine", and "Medication Cabinet".

#### **5. Parties' Contentions**

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

1. The disputed domain name is confusingly similar to the Complainant's TEVA mark in which the Complainant has rights. The disputed domain name fully incorporates the TEVA mark with the addition of a misspelling of the term "Canada", which renders the disputed domain name similar to the Complainant's domain name <tevacanada.com>. The addition of the misspelt geographic name "Canad" does not prevent a finding of confusing similarity as the TEVA mark remains clearly recognizable in the disputed domain name. The addition of the generic Top-Level Domain ("gTLD") ".com" does not differentiate the disputed domain name from the Complainant's trade mark.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant invested substantial resources in promoting its products under the TEVA mark. The disputed domain name which comprises the Complainant's distinctive TEVA mark and the addition of the misspelt geographic name "Canad" is not a name that one would legitimately and in good faith choose. The combination of "TEVA" and "Canad" is not a descriptive combination which serves to indicate specific characteristics of any other goods or services, except to refer to the Complainant. This is a clear instance of cybersquatting and the Respondent's intention to take advantage of the Complainant's reputation and goodwill to cause confusion and mislead the public.
3. The Respondent's webpage is designed to lure consumers in search of the Complainant's TEVA mark and redirect them to competitors. The Respondent has attempted, for commercial gain, to misleadingly divert consumers or Internet users to the Complainant's competitors by the use of related keywords such as "The Medicine Cabinet" and "All Medicine", which reinforces an association between the Complainant and the disputed domain name, that does not exist. Given the confusing similarity of the disputed domain name to the Complainant's trade mark, such use of the disputed domain name is neither a *bona fide* nor legitimate noncommercial or fair use of the disputed domain name.
4. The Complainant has shown, on a *prima facie* basis, of the Respondent's intent to usurp the reputation of the Complainant and make illegal gains off its reputation and goodwill. The Respondent's usage of the disputed domain name has the propensity to cause irreparable loss to the Complainant's reputation and goodwill. The Complainant has not authorized the Respondent either as a licensee, vendor, supplier, distributor, or in any other form to register or make use of the disputed domain name. Given the fame of the Complainant's TEVA mark, any person or entity using the mark or TEVA name in any manner is bound to lead consumers and users to infer that its product or service has an association or nexus with the Complainant which leads to confusion and deception.
5. The disputed domain name incorporates the Complainant's trade mark which is neither owned by the Respondent, nor is the Respondent commonly known by the name TEVA as an individual, business, or any other organization. It is clearly not an attempt on the part of the Respondent to make a legitimate noncommercial or fair use of the disputed domain name. The Respondent's obvious intent is for commercial gain, by misleadingly diverting consumers or to tarnish the Complainant's trade mark. The Respondent is deliberately attempting to portray a connection between the disputed domain name and the Complainant. The disputed domain name is clearly intended to exclusively "pass off" as the Complainant and free ride on the Complainant's reputation and goodwill.
6. The disputed domain name was registered and is being used in bad faith. The Complainant's TEVA mark is a distinctive term. The disputed domain name resolved to a parking page with PPC links, through which the Respondent intends to misleadingly divert Internet users to the websites of the Complainant's competitors by the use of related keywords.
7. The registration of a domain name that is confusingly similar to another trade mark, despite actual or constructive knowledge of the mark holder's rights, constitutes bad faith registration and use. A preliminary search on the Internet would reveal that the TEVA mark is associated with the Complainant and has been used by them in their trade and business for a long time. The Complainant asserts that it is inconceivable that the registration of the disputed domain name was made without full knowledge of the existence of the Complainant and its well-known trade mark. A respondent who (deliberately) fails to search and/or screen registrations against available online databases would be responsible for any resulting abusive registrations under the concept of willful blindness, depending on the facts and circumstances of a case.
8. The Respondent is not authorized to make use of the disputed domain name in any form. The disputed domain name was registered to impersonate the Complainant in order to create consumer confusion and lure prospective consumers seeking the Complainant's products. This constitutes evidence of bad faith registration and use of the disputed domain name.

9. The parked page to which the disputed domain name resolves provides hyperlinks featuring related keywords that link to advertisements for the Complainant's competitors. Such PPC links are a guise to divert consumers and generate "click through" revenue for the Respondent, which is further evidence of bad faith registration and use of the disputed domain name.
10. The passive holding of the disputed domain name does not prevent a finding of bad faith as the following factors have been met:
  - a. the Complainant's mark is intrinsically distinctive and enjoys a reputation;
  - b. the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good faith use;
  - c. the Respondent concealed his identity and even used false contact details; and
  - d. given all these facts and the fact that the disputed domain name exactly reproduces the Complainant's earlier TEVA trade mark, any good faith use of by the Respondent is implausible.
11. Given the immense popularity and goodwill enjoyed by the Complainant's TEVA mark globally by virtue of its continuous and extensive use and market reputation, it is clear that the Complainant's trade mark is well known. Bad faith registration should be found here for the following reasons:
  - a. the Complainant's name was famous at the time the disputed domain name was registered;
  - b. the registration of a well known trade mark by a party with no connection to the owner of the trade mark, and without authorization or legitimate purpose to utilize the mark reveals bad faith; and
  - c. the very use of the disputed domain name by the Respondent who has no connection whatsoever with the Complainant's mark and products suggests opportunistic bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1 Preliminary Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. The Complainant requested that the language of the proceeding be English. The reasons are that:

- (i) the name servers for the disputed domain name uses only words in the English language; and
- (ii) the resulting parking page displays advertisements in the English language which suggests that the Respondent is familiar with the language.

The Respondent did not comment on the language of the proceeding.

Paragraph 11(a) of the Rules provides that:

"Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the

administrative proceeding.”

The intention of paragraph 11(a) is to allow UDRP panels some measure of flexibility and discretion to consider the entire circumstances of each case, to ensure fairness between the parties, while at the same time not undermining the mandate for the proceeding to be administered in an expeditious manner. The relevant points of consideration would include the parties’ level of familiarity with the respective languages, the expenses to be incurred, the possibility of delay in the proceeding if translations are required, as well as the language of the domain name(s) in dispute and of the resolving websites.

Having considered the relevant factors and interests of the respective Parties, the Panel determines that it would be appropriate for English be the language of the proceeding. The Panel is persuaded that the Respondent is more likely than not familiar with and conversant in the English language, taking into account his selection of the disputed domain name which comprises the Complainant’s trade mark and deliberately misspelt English word. The Respondent had, moreover, been notified by the Center, in both Chinese and English language, of the commencement of the proceeding, the language of the Registration Agreement, and deadline for filing a Response. He therefore had ample opportunity to raise any objection or propose to submit his Response in Chinese, but he did not do so. In the absence of any objection and justification therefor by the Respondent, the Panel does not find it procedurally efficient to have the Complainant translate the Complaint into Chinese.

## **6.2 Substantive Issues**

### **A. Identical or Confusingly Similar**

The Complainant has established it has rights in the TEVA trade marks. The disputed domain name fully incorporates the TEVA mark with the addition of a typo of the geographic term “Canada”, which does not prevent a finding of confusing similarity with the Complainant’s trade mark.

The gTLD “.com” is a technical requirement for domain name registrations and does not have any impact on the issue of the identity or confusing similarity between the disputed domain name and the Complainant’s trade mark.

The Panel accordingly finds that the first element of paragraph 4(a) of the Policy has been satisfied.

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

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant’s extensive use and registrations of the TEVA trade marks predate the registration date of the disputed domain name. The Complainant did not license nor authorize the Respondent to use TEVA as a trade mark or in a domain name. Neither is there any evidence that the Respondent is commonly known by the names “teva” or “tevacanad”. The use of the disputed domain name which incorporates the Complainant’s well known trade mark and the misspelt geographical term, “Canad”, to a parking page with PPC links to third-party websites selling the Complainant’s and/or its competitors’ goods does not constitute a legitimate noncommercial or fair use of the disputed domain name within the meaning of paragraph 4(c)(iii) of the Policy. The Respondent’s choice of the disputed domain name shows a clear intent to obtain an unfair commercial gain, with a view to misleadingly divert consumers.

Having established a *prima facie* case, the burden of production shifts to the Respondent to show that he has rights or legitimate interests in the disputed domain name. The Respondent did not file a Response in the present case to rebut the Complainant’s assertions and evidence.

In the circumstances, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel therefore finds that the second element of paragraph 4(a) of the Policy has been satisfied.

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

The Panel is persuaded in the circumstances of this case that the Respondent targeted the Complainant and its well known TEVA mark. There is no other reason for the Respondent to have registered the disputed domain name, being a combination of the Complainant's TEVA mark and a misspelling of "Canada", except for the sole purpose of riding off the reputation and goodwill in, and creating confusion with, the Complainant's TEVA trade marks. "If [...] circumstances indicate that the respondent's intent in registering the disputed domain name was in fact to profit in some fashion from or otherwise exploit the complainant's trade mark, panels will find bad faith on the part of the respondent. While panel assessment remains fact-specific, generally speaking such circumstances, alone or together, include: (i) the respondent's likely knowledge of the complainant's rights, (ii) the distinctiveness of the complainant's mark, (iii) a pattern of abusive registrations by the respondent, (iv) website content targeting the complainant's trade mark, *e.g.*, through links to the complainant's competitors, (v) threats to point or actually pointing the domain name to trade mark abusive content, (vi) threats to 'sell to the highest bidder' or otherwise transfer the domain name to a third party, (vii) failure of a respondent to present a credible evidence-backed rationale for registering the domain name, [...]." (See section 3.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition)

Considering the relevant factors and circumstances of this case, the Panel finds that there has been bad faith registration and use. The factors and considerations include these:

- (i) the high degree of distinctiveness and reputation of the Complainant's TEVA mark;
- (ii) the Respondent's likely knowledge of the Complainant's rights in the TEVA mark;
- (iii) the content of the parking page to which the disputed domain name resolves, with links to the Complainant's competitors' websites;
- (iv) the nature of the disputed domain name which wholly incorporates the TEVA mark plus a misspelling of a geographic term;
- (v) the failure of the Respondent to submit a Response, or to provide any explanation for registering the disputed domain name or evidence of actual or contemplated good-faith use; and
- (vi) the implausibility of any good faith use to which the disputed domain name may be put.

It can be surmised that the Respondent fully appreciated the value associated with the TEVA trade mark, which is why he registered a combination of the TEVA mark and the misspelling of the word "Canada". He hoped to draw Internet traffic through typographical errors made by Internet users who may be searching for the Complainant's products. Moreover, the Complainant owns the domain name <tevacanada.com> which the disputed domain name is closely similar to. The Panel therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

The Panel therefore finds that the third element of paragraph 4(a) of the Policy has been satisfied.

## 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 <tevacanad.com> be transferred to the Complainant.

*/Francine Tan/*

**Francine Tan**

Sole Panelist

Date: August 17, 2022