

ADMINISTRATIVE PANEL DECISION

TEVA Pharmaceutical Industries Limited v. Privacy Service Provided by Withheld for Privacy ehf / Victor Mike
Case No. D2022-2541

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 / Victor Mike, Canada.

2. The Domain Name and Registrar

The disputed domain name <agro-tevapharmaceutical.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 13, 2022. On July 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 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 the Complainant on July 19, 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 21, 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 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 16, 2022. The Respondent emailed the Center on August 18, 2022.

The Center appointed Adam Taylor as the sole panelist in this matter on August 18, 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

Since 1901, the Complainant and its predecessors have supplied pharmaceutical products under the mark TEVA. The Complainant is now one of the world's largest producers of generic medicines, operating in some 60 countries worldwide and with revenues of some USD 15.9 billion in 2021.

The Complainant owns many trade marks for TEVA worldwide including Israeli trade mark no. 41075, filed on August 5, 1975, in class 5.

The disputed domain name was registered on April 4, 2022.

As of July 9, 2022, the disputed domain name resolved to a website branded with a logo containing the terms "AGRO-TEVA" and "PHARM". The home page was dominated by a large photograph of a medicines production line followed by introductory text which began: "Agro-Teva Pharmaceutical & Laboratory Company is a wholly owned subsidiary of Global Pharmaceutical, a global pharmaceutical company specialising in the manufacture and distribution of generic pharmaceutical medicines..." The footer of the website included a United Kingdom ("UK") address and telephone number.

The Respondent did not reply to the Complainant's cease and desist emails of June 14 and 20, 2022.

5. Parties' Contentions

A. Complainant

The following is a summary of the Complainant's contentions.

The Complainant's trade mark is well known.

The disputed domain name is confusingly similar to the Complainant's trade mark as it completely incorporates the Complainant's mark in addition to the terms "agro" and "pharmaceutical".

The Respondent lacks rights or legitimate interests in the disputed domain name.

The Complainant has not authorised the Respondent to register or use the disputed domain name.

The disputed domain name is not being used for a *bona fide* offering of goods or services.

The disputed domain name is not descriptive and is referable only to the Complainant. It is obvious from the fame and distinctive nature of the Complainant's mark that the Respondent registered the disputed domain name with the Complainant in mind.

The disputed domain name is being used to host a "dummy" website with content copied from other websites, and making false claims, which is designed to confuse the public and cause irreparable damage to the Complainant's reputation.

The disputed domain name has active name servers set up, indicating that the Respondent is using the disputed domain name for phishing emails.

The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Respondent is not commonly known by the name “Teva” and a Google search brings up no other reference to the name “Agro-Teva Pharmaceutical & Laboratory Company”, except a duplicate version of the Respondent’s site at “www.flashxpressdcs.com”.

The above matters also indicate that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not file a reply to the Complainant’s contentions. However, the Respondent emailed the Center on August 18, 2022, stating “I own this domain, and willing to sell it only for \$20,000 GBP. [G]et back to me for a deal”.

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered **and** is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established registered rights in the mark TEVA, as well as unregistered trade mark rights deriving from the Complainant’s extensive and longstanding use of that mark.

Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) makes clear that, where the relevant trade mark is recognisable within the disputed domain name, the addition of other terms, whether descriptive, meaningless, or otherwise, would not prevent a finding of confusing similarity under the first element.

Here, the disputed domain name consists of the Complainant’s distinctive trade mark, which remains readily recognisable within the disputed domain name, plus the additional terms “agro” and “pharmaceutical”, which do not prevent a finding of confusing similarity as explained above.

Disregarding the Top-Level Domain (“TLD”) suffix, which is excluded from the comparison, the disputed domain name is identical to the Complainant’s trade mark. Accordingly, the Panel finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

As explained in section 2.1 of [WIPO Overview 3.0](#), the consensus view is that, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If not, the complainant is deemed to have satisfied the second element.

Here, the Complainant has not licensed or otherwise authorised the Respondent to use its trade mark.

Paragraph 4(c) of the Policy gives examples of circumstances which, if proved, suffice to demonstrate that a respondent possesses rights or legitimate interests.

As to paragraph 4(c)(i) of the Policy, as explained below the Panel considers that the Respondent has used the disputed domain name to impersonate the Complainant for fraudulent purposes. Such use of the disputed domain name could not be said to be *bona fide*.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Panel finds that the Complainant has established a *prima facie* case of lack of rights or legitimate interests and there is no rebuttal by the Respondent.

For the above reasons, the Panel concludes that the Complainant has established the second element of paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that the Respondent's website effectively impersonates the Complainant by using the Complainant's famous and distinctive name "Teva" in connection with a description that is clearly referable to the Complainant, namely "a global pharmaceutical company specialising in the manufacture and distribution of generic pharmaceutical medicines..."

Furthermore, the Complainant has produced evidence that the disputed domain name has been set up to send and receive emails.

Accordingly, although the exact nature of the scheme is not clear, it is evident to the Panel that some sort of fraudulent activity is afoot. The fact of impersonation strongly indicates that the Respondent set out to illicitly target the Complainant's trade mark.

Furthermore, the Respondent has not responded to the Complaint. Indeed, the Respondent emailed the Center offering to sell the disputed domain name for a substantial sum, but without addressing, or even referring to, the Complainant's allegations of fraud.

In these circumstances, the Panel readily concludes that the disputed domain name was registered and is being used in bad faith by the Respondent.

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 <agro-tevapharmaceutical.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: September 1, 2022