

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Ltd. v. Picon Alfonso
Case No. D2022-4917

1. The Parties

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

The Respondent is Picon Alfonso, United States of America.

2. The Domain Name and Registrar

The disputed domain name <tevapharmaus.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 December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 23, 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 amended Complaint on December 23, 2022.

The Center verified that the Complaint together with the amended 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 December 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 20, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on February 3, 2023. 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 was established in 1935 and is a leading global pharmaceutical company that delivers healthcare solutions. The Complainant was one of the world's largest generic medicines producers in 2018 and is active in over 60 countries and it had sales of more than USD 15 billion and more than 37,000 employees internationally in 2021.

The Complainant has a large portfolio of trademarks consisting of TEVA, TEVAPHARM and TEVA PHARMA in many countries and territories worldwide, such as follows:

- Israeli Registration for TEVA No. 41075, registered on July 5, 1977;
- United States of America Registration for TEVA No. 1567918, registered on November 28, 1989;
- European Union Registration for TEVA No. 000115394, registered on April 29, 1998;
- French Trademark Registration for TEVA PHARMA No. 3256982, registered on November 14, 2003;
- International Registration for TEVA No. 1319184, registered on June 15, 2016;
- European Union Trademark Registration for TEVAPHARM No. 018285645, registered on January 9, 2021.

The Complainant also owns many domain names including <tevapharm.com> and <tevausa.com>, registered both on June 14, 1996, which host websites that display information about the Complainant's group and its activities.

The disputed domain name was registered on October 14, 2022. It resolves to a website, showing a variety of hyperlinks to third parties' sites, most of which relate to the sale of pharmaceutical goods and services.

5. Parties' Contentions

A. Complainant

The Complainant's contentions are divided into three parts as follows:

First, the Complainant asserts that the generic Top-Level Domain ("gTLD") ".com" is not of distinguishing effect and must be removed from the analysis. Within the main part of the disputed domain name, that is, "tevapharmaus", the Complainant's TEVA, TEVAPHARM and TEVA PHARMA trademarks are identically reproduced. And, the addition of the word "us" to the Complainant's TEVA PHARMA trademark should not prevent a finding of confusing similarity. Hence, the disputed domain name is confusingly similar to its trademarks and its domain name.

Second, the Complainant asserts that the Respondent is not a licensee of the Complainant, and it has not received any consent, permission or acquiescence from the Complainant to use its TEVA, TEVAPHARM and TEVA PHARMA trademarks in association with the registration of the disputed domain name. In addition, no evidence has been found that the Respondent has been commonly known by the main part of the disputed domain name. Hence, the Respondent has no rights or legitimate interest in the disputed domain name.

Third, the Complainant asserts that its TEVA, TEVAPHARM and TEVA PHARMA trademarks were registered and have been in use well before the disputed domain name was registered by the Respondent. According to the Complainant, it is impossible to believe that the Respondent would have chosen the disputed domain name if it did not have the Complainant's marks and activities in mind. Furthermore, the Complainant asserts that the Respondent is using the disputed domain name in order to misdirect Internet users searching for information about the Complainant or searching for the Complainant's pharmaceutical goods and services to other companies' similar goods and services. Hence, the disputed domain name has been registered in bad faith and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The disputed domain name includes the Complainant's TEVA, TEVAPHARM and TEVA PHARMA trademarks in their entirety. Such inclusion is by itself enough to consider the disputed domain name is confusingly similar to the Complainant's trademarks. The addition of the term "us" to the Complainant's trademarks does not prevent a finding of confusing similarity. Further, as well established in prior UDRP decisions, the gTLD ".com" contained in the disputed domain name is typically irrelevant in the determination of the confusing similarity.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the trademarks in which the Complainant has rights. So, the above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence that shows the Respondent is commonly known by the name "teva", "tevapharm", "tevapharma", or "tevapharmaus". Moreover, no evidence is found showing that the Respondent is affiliated with the Complainant or authorized or licensed to use any of the Complainant's trademarks.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. So, the above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

In consideration of the history and size of the Complainant's business using its TEVA, TEVAPHARM and TEVA PHARMA trademarks, it is highly unlikely that the Respondent would not have known of the Complainant's rights in the trademarks at the time of the disputed domain name's registration. In addition, in light of the fact that nothing in the disputed domain name bears a reasonable relevance to the Respondent and the lack of the Respondent's own rights to or legitimate interests in the disputed domain name, there can be found no reasonable possibility of the Respondent having its own rights or legitimate interests when the Respondent registered the disputed domain name.

Moreover, the Complainant claims that the Respondent is using the disputed domain name in order to misdirect Internet users searching for information about the Complainant or searching for the Complainant's pharmaceutical goods and services to other companies' similar goods and services. On the other hand, the Respondent did not show that the Respondent is not using the disputed domain name in bad faith and did not rebut the assertions of the Complainant in this proceeding.

Therefore, based on the available record, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. So, the above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be 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 <tevapharmaus.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: February 13, 2023