

## **ADMINISTRATIVE PANEL DECISION**

Gilead Sciences, Inc. v. Domain Administrator  
Case No. D2023-1455

### **1. The Parties**

The Complainant is Gilead Sciences, Inc., United States of America (“United States”), internally represented.

The Respondent is Domain Administrator, Nigeria.

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

The disputed domain name <gileadadvancingaccess.com> 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 April 4, 2023. On April 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 2023, 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 (Privacyprotection.com, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 2023 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 April 12, 2023 and another amendment to the Complaint on April 14, 2023.

The Center verified that the Complaint together with the amendments 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 April 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2023. The Respondent did not submit any response. Nonetheless, the Center received an auto reply from the Respondent for each email sent out by the Center. Accordingly, the Center notified the Parties on May 11, 2023 that it would proceed with the panel appointment.

The Center appointed Marie-Emmanuelle Haas as the sole panelist in this matter on May 25, 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 is a large pharmaceutical firm, founded in 1987 and one of the largest biopharmaceutical companies in the world.

It has manufactured and marketed numerous well-known pharmaceutical drugs.

The Complainant relies on GILEAD trademark registrations in the United States, Brazil, Japan, Singapore, India, China, the European Union, and Australia.

The produced evidences do not include the renewal certificates.

The Panel could check the status of the American and European Union GILEAD trademarks, which are indeed still valid.

On this basis, the Panel relies on the following trademarks:

- United States registration GILEAD No 3,251,595, registered on June 12, 2007 in class 5, renewed;
- United States registration GILEAD SCIENCES No 1,611,838 registered on September 4, 1990 in class 5, renewed;
- European Union trademark GILEAD No 3913167 registered on November 7, 2005 in classes 1, 5, and 42, renewed
- Brazilian GILEAD trademark No 904960269 registered on July 7, 2015 in class 5;
- United States registration ADVANCING ACCESS No 3,265,504, registered on July 17, 2007 in class 44, renewed.

The Complainant is the registrant of the domain name <gilead.com> since 1995 and uses it since 1997 to resolve to its commercial website.

The disputed domain name was registered on July 6, 2022. It resolves to a parking page offering sponsored links dedicated to pharmacy.

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

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

The Complainant produces numerous articles on its position on the pharmaceutical market and relies on several WIPO cases that recognized its GILEAD trademark as a "famous registered trademark." (*Gilead Sciences, Inc. v. Super Privacy Service LTD / Kolawole Feyisitan*, WIPO Case No. [D2020-3517](#)).

The Respondent registered the disputed domain name which is composed of its famous and well-known GILEAD trademark, with the addition of a misspelling of its ADVANCING ACCESS trademark.

This addition increases the similarity to the Complainant's trademarks.

Therefore, the disputed domain name is confusingly similar to the GILEAD and ADVANCING ACCESS trademarks.

The Respondent is not associated or affiliated with the Complainant which did not grant him any right to use its trademarks, sell any products or register the disputed domain name.

The Respondent's strategy is to capture and divert Internet users searching genuine medical products or official information.

The Complainant's GILEAD trademark is so well-known that the Respondent is not in a situation to make any legitimate use of the disputed domain name.

This shows a lack of right or legitimate interest in respect of the disputed domain name.

The registration of a domain name composed with the well-known trademark GILEAD in association with a misspelling of the another Complainant's trademark using a privacy shield service and providing contact details that do not provide any name, was intentional.

The Respondent was well aware of the well-known GILEAD trademark and of the ADVANCING ACCESS trademark when it decided to register the disputed domain name.

It was made to divert Internet users to be used in relation with pharmaceutical products, providing sponsored links to websites related to drugs prescription, in order to generate pay "click through" revenue.

The Complainant asserts that it has been targeted in over 30 UDRP proceedings where the Panel found in its favor.

Therefore, the Respondent registered and is using the disputed domain name in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The disputed domain name wholly incorporates the GILEAD trademark with the addition of a misspelling of the ADVANCING ACCESS trademark.

Thus, the disputed domain name is confusingly similar to the GILEAD and ADVANCING ACCESS trademarks.

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

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

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it 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 has been commonly known by the disputed domain name, even if it 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.

The Complainant asserts that the Respondent is not related in any way with the Complainant.

The use of the disputed domain name to resolve to a parking website with sponsored links dedicated to pharmacy is not a *bona fide* use.

The Respondent did not respond to the Complainant to rebut its *prima facie* case. It did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

Therefore, the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in respect to the disputed domain name.

The Panel concludes that the Complainant has established that the Respondent does not have any rights or legitimate interests in the disputed domain name, within the meaning of paragraph 4(a)(ii) of the Policy.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of the disputed domain name.

It provides that:

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 a domain name in bad faith:

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

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

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to your website 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 website or location.

Given the Complainant's reputation, it is reasonable to assume that the Respondent was well aware of the GILEAD and ADVANCING ACCESS trademarks when it registered the disputed domain name.

Combining these both trademarks shows that the Respondent perfectly knows the Complainant's GILEAD and ADVANCING ACCESS trademarks.

The Respondent is using the disputed domain name to divert Internet users searching for GILEAD branded products or to consult reliable and official information on the Complainant's business.

These Internet users are directed to a parking website dedicated to pharmacy, which generates pay-per-click revenue to the benefit of the Respondent.

This constitutes bad faith use in the meaning of the Policy.

Given the scope of protection of the GILEAD trademark and its reputation, the Panel cannot conceive any use that the Respondent could make of the disputed domain name that would not interfere with the Complainant's trademark rights.

Under the circumstances of the case, the Panel finds that the disputed domain name has been registered and is being used in bad faith, within the meaning of paragraph 4(b)(iv) and 4(a)(iii) of the Policy.

## **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 <gileadadvancingaccess.com> be transferred to the Complainant.

*/Marie-Emmanuelle Haas/*

**Marie-Emmanuelle Haas**

Sole Panelist

Date: June 8, 2023