

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Ltd. v. mike franco
Case No. D2023-3859

1. The Parties

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

The Respondent is mike franco, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <tevaspharmaceuticals.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 September 15, 2023. On September 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 15, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 18, 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 September 19, 2023.

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 September 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 20, 2023.

The Center appointed Marie-Emmanuelle Haas as the sole panelist in this matter on October 26, 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.

The Center notified an Administrative Panel Procedural Order on November 20, 2023, to request further information on the issue of the Complainant's address. The Complainant replied on November 21, 22, and 28, 2023.

4. Factual Background

The Complainant was established in 1935, and is one of the world's largest generic medicines, leveraging a portfolio of 3,600 different products in nearly every therapeutic area.

According to the Complainant's annual report, it was active in 2022 in over 60 countries and it had revenues of more than USD 14.9 billion and more than 37,000 employees internationally.

The Complainant has a large portfolio of trademarks consisting of TEVA in many countries and territories worldwide, including:

- European Union word and device Trademark Registration TEVA No 000115394 registered on April 29, 1998, in class 5;
- United States Trademark Registration TEVA No 1567918 registered on November 28, 1989, in class 5;
- United States Trademark word and device Registration TEVA No 2353386 registered on May 30, 2000, in class 5;
- Canada Trademark Registration TEVA No TMA411063, registered on April 16, 1993, in classes 3, 5, and 10;
- European Union Trademark Registration no. 018285645 TEVAPHARM registered on January 9, 2021, in classes 5 and 44;
- Denmark Trademark Registration TEVAPHARM No VR 2011 02130 registered on August 31, 2011, in classes 5, 10, and 35;
- Chinese Trademark Registration TEVA No 644291 registered on June 7, 1993, in class 3.

The disputed domain name <tevaspharmaceuticals.com> was registered on August 24, 2023, and resolved to a parking page before the Complaint was filed. This parking page was ranking websites dedicated to pharmaceutical products and activities. Mail Exchange ("MX") servers are installed on the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant explains that it is commonly known as "Teva Pharmaceuticals", an abbreviation of its company name Teva Pharmaceutical Industries Ltd.

It relies on its here above cited TEVA trademarks which are all prior to the disputed domain name.

It further relies on a number of decisions under the UDRP, that have recognized the significant reputation and the well-known nature of the TEVA mark. See, for instance, *Teva Pharmaceutical Industries Limited v. Rbsina Kbina*, WIPO Case No. [D2023-1243](#); *Teva Pharmaceutical Industries Limited v. Joseph Waweru, Joseph Waweru*, WIPO Case No. [D2022-0955](#); *TEVA Pharmaceutical Industries Limited v. James Andrew*, WIPO Case No. [D2022-3405](#); *Teva Pharmaceutical Industries Limited v. Amal Mhah, New tevapharma, Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) /Name Redacted*, WIPO Case No. [D2021-0561](#);

Teva Pharmaceutical Industries Ltd. v. Domain Administrator, SeePrivacyGuardian.org / Torsten Burger, WIPO Case No. [D2021-0924](#); *TEVA Pharmaceutical Industries Limited v. Solomon sheriff*, WIPO Case No. [D2023-0570](#); or *Teva Pharmaceutical Industries Ltd. v. Frank Umbach and Henk Bergsma*, WIPO Case No. [D2022-2733](#)

The Complainant contends that the disputed domain name reproduces in full the well-known TEVA trademark, with only the addition of the element “spharmaceuticals”, which does not alleviate the close similarities between the TEVA trademark and the disputed domain name.

The Complainant’s TEVA trademark is clearly recognizable in the disputed domain name which is therefore identical or confusingly similar to the Complainant’s TEVA trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name

Section 4(c) of the Policy sets out certain circumstances that, if proven by the evidence presented, may demonstrate the respondent’s rights or legitimate interests to the domain name.

The Complainant contends that none of the circumstances cited in section 4(c) of the Policy applies, since:

- it has not authorized the Respondent to use its TEVA trademark for any reason or in any manner, including in or as part of the disputed domain name;
- it is not affiliated or otherwise connected with the Respondent;
- it has found no evidence that the Respondent has been commonly known by the disputed domain name or by the term “tevaspharmaceuticals”;
- it has found nothing to suggest that the Respondent holds any trademark rights on the disputed domain name or the term “tevaspharmaceuticals”

In notes that the term “tevaspharmaceuticals” is almost identical to “Teva Pharmaceuticals”, which is the abbreviation commonly used to identify the Complainant. This term is associated by Internet search engines with the Complainant and its activities.

This term “tevaspharmaceuticals” does not seem to have any meaning in English language.

There is no doubt that the disputed domain name carries a high risk of implied false affiliation with the Complainant and its activities.

The disputed domain name resolves to a pay-per-click (“PPC”) website, showing several hyperlinks related to the pharmaceutical industry, area in which the Complainant and its TEVA trademarks are well-known, for the purpose of generating PPC revenues.

In relation to this use of the disputed domain name, a number of previous UDRP panels and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.9 agree that using a domain name to host a PPC website does not present a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s trademark or otherwise mislead Internet users, as it is the case here.

In view of all these circumstances, the Complainant finds highly unlikely that the Respondent intended to use the Domain Name for any legitimate or fair use. Likewise, the Complainant cannot conceive any possible situation in which the use of the disputed domain name would not infringe its rights in TEVA. Therefore, the Complainant contends that the second element of the UDRP is fulfilled in this case as the Respondent has no rights or legitimate interests in the domain name.

The disputed domain name was registered and is being used in bad faith.

Registration in bad faith

In the Complainant's view, there are several facts and surrounding circumstances to establish that the Respondent has registered the disputed domain name in bad faith.

The disputed domain name reproduces in full the Complainant's TEVA and TEVAPHARM trademarks, without the consent or authorization of the Complainant.

It is almost identical to "Teva Pharmaceuticals", which is an abbreviation commonly used to identify the Complainant.

It was registered on August 24, 2023, whereas the Complainant's TEVA trademark has been registered internationally for many years.

Hence, the prevalence of the Complainant and its mark on search engines and on the web makes it implausible that the Respondent was unaware of them when it was registered.

A simple search on an online trademark register, or in the Google search engine on the existence of the Complainant and of its rights in TEVA and TEVAPHARM evidences how such results are referred to the Complainant and its products.

Finally, in relation to the above, the Complainant notes that, according to previous UDRP decisions, the fact that the Respondent registered a domain name which incorporates a well-known trademark, as it is the case here, is alone sufficient to give rise to an inference of bad faith.

It relies on the decision in *Teva Pharmaceutical Industries Ltd. v. Domain Administrator, PrivacyGuardian.org / Torsten Burger*, WIPO Case No. [D2021-0924](#).

In view of all these circumstances, the Complainant affirms that the Respondent had the Complainant and its activities in mind at the time of registration of the disputed domain name, which amounts to a registration in bad faith.

Use in bad faith

The disputed domain name resolves to a PPC website, showing several hyperlinks related to the pharmaceutical industry, area in which the Complainant and its TEVA trademark are well-known.

In the Complainant's view, this is a clear indication that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with the Complainant's TEVA trademark as to the source, sponsorship, affiliation or endorsement of this website.

This conclusion is further evidenced by the fact that the disputed domain name is almost identical to "Teva Pharmaceuticals", the name by which the Complainant is also known, and very similar to the domain name <tevapharm.com>, used by the Complainant to operate its online presence.

These circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

It relies on prior cases, such as *Teva Pharmaceutical Industries Ltd. v. 王化德 (Huade Wang aka Hua De Wang)*, WIPO Case No. [D2022-5038](#): "The consensus view of previous UDRP panels is that a domain name registrant is normally deemed responsible for content appearing on a website at its domain name, even if such registrant may not be exercising direct control over such content - for example, in the case of advertising links appearing on an "automatically" generated basis. The Panel notes the presumption that the Respondent or a third party stands to profit or make a "commercial gain" from advertising revenue by such an arrangement trading on third-party trade marks. In the Panel's opinion, such links clearly seek to

capitalize on the trade mark value of the Complainant's TEVA trade mark. The Panel therefore determines that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his websites by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's websites, and the Panel finds that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case."

In view of all these circumstances, the Respondent's conducts prove that the disputed domain name was registered and is being used in bad faith. Therefore, the Complainant considers that the third element of the Policy is deemed satisfied.

B. Respondent

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

6. Discussion and Findings

To prevail in the proceedings under the Policy, the Complainant must show that the three requirements set forth in paragraph 4(a) of the Policy are met. Those requirements are:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Likewise, under paragraph 4(c) of the Policy, the Respondent can demonstrate its rights and legitimate interests in the disputed domain name in its response to the Complaint by demonstrating, among others, the circumstances mentioned under this paragraph of the Policy.

A. Identical or Confusingly Similar

The Complainant has clearly established its registered prior rights in the TEVA and TEVA PHARMA trademarks.

These trademarks all predate the disputed domain name, for example the United States TEVA trademark No 1567918 predates it 34 years.

The disputed domain name reflects the Complainant's distinctive and established TEVA and TEVA PHARMA trademarks. It incorporates the TEVA trademark with the addition of "spharmaceuticals".

This term designates the pharmaceutical sector for which the trademark is used.

It does not avoid the confusing similarity and the TEVA trademark is clearly recognizable in the disputed domain name.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. The condition of paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

As set forth by paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to the Respondent of the dispute, its use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the 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 Respondent has not been licensed or authorized to use the TEVA and TEVA PHARMA trademarks or to register the disputed domain name.

The Respondent used the disputed domain name to give access to a parking website that was ranking websites dedicated to pharmaceutical products and activities and to install MX servers that enables the Respondent to create email addresses impersonating the Complainant and to use these addresses to send scam emails. This is not a fair use of the disputed domain name.

There is no evidence of any *bona fide* use of the disputed domain name.

The Respondent did not respond to the Complainant in order to 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, which was not rebutted by the Respondent.

Accordingly, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by an Administrative Panel to be evidence of bad faith registration and use of a 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 you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your web site or location or of a product or service on your web site or location.”

The Complainant was founded in 1901 and has been operating its business since then, holding trademark rights for TEVA and TEVAPHARM since at least 1989.

Given the well-known character of the TEVA and TEVA PHARMA trademarks, the Respondent cannot have ignored the reputation of this trademark at the time it registered the disputed domain name.

The composition of the disputed domain name <tevaspharmaceuticals.com> proves that the Respondent targeted the Complainant when registering it.

The Panel finds that the Complainant has submitted proof that the disputed domain name has MX servers that enable the Respondent to use it for creating and using email addresses composed with "[...].@tevaspharmaceuticals.com". These email addresses can be used for any purposes and notably for spamming or phishing purposes, to obtain banking and personal data from the Complainant's customers and to misuse these data.

This is to the detriment of the Complainant and of the targeted Internet users.

This the proof that the Respondent aimed at creating a likelihood of confusion with the Complainant's trademarks in order to mislead Internet users, and especially the Complainant's clients, and to disrupt its activity. Such conduct is within paragraph 4(b)(iv) of the Policy.

Given the well-known character of the TEVA and TEVA PHARMA trademarks, 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(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, <tevaspharmaceuticals.com>, be transferred to the Complainant.

/Marie-Emmanuelle Haas/

Marie-Emmanuelle Haas

Sole Panelist

Date: November 30, 2023