

## **ADMINISTRATIVE PANEL DECISION**

Teladoc Health, Inc. v. Domain Administrator, Fundacion Privacy Services LTD

Case No. D2024-2118

### **1. The Parties**

The Complainant is Teladoc Health, Inc., United States of America, represented by The GigaLaw Firm, Douglas M. Isenberg, Attorney at Law, LLC, United States of America (“United States”).

The Respondent is Domain Administrator, Fundacion Privacy Services LTD, Panama.

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

The disputed domain name <teledochealth.com> is registered with Media Elite Holdings Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 22, 2024. On May 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 May 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 17, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on June 24, 2024. 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**

It results from the Complainant's undisputed allegations that it is a publicly traded company on the New York Stock Exchange (symbol:TDOC), amongst the leaders in whole-person virtual care – offering the technology to connect, expertise its customers can trust and the power to improve health for all. It was founded on a simple yet revolutionary idea: that everyone should have access to the best healthcare, anywhere in the world on their terms. Today, it is delivering on its mission by providing whole-person virtual care that includes primary care, mental health, chronic condition management and more. It has developed and built upon its diverse capabilities over the course of more than 20 years, evolving its product and service portfolio from a suite of point solutions to a whole person offering. It has approximately 90 million members and thousands of clients around the globe, with annual revenue in 2023 of more than USD 2.6 billion. The Complainant employed approximately 5,600 people as of December 31, 2023, approximately 63% of whom work in the United States and 37% in international locations.

The Complainant is the registered owner of several trademarks worldwide for “TELADOC” and “TELADOC HEALTH”, such as, United States trademark registration No. 3,873,546 TELADOC, registered on November 9, 2010 for services in class 44; United States trademark registration No. 6,950,247 TELADOC HEALTH, registered on January 10, 2023 for goods and services in classes 9, 35, 42 and 44.

It uses the domain names <teladoc.com> (registered April 15, 2002) and <teladochealth.com> (registered April 12, 2018) for its official website.

The disputed domain name <teledochealth.com> was registered on February 4, 2019. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name is used in connection with various websites at different times. The undisputed evidence shows that it redirected visitors to a website that displays a type of false warning, known as a “tech support scam”. It falsely informs visitors that “Access to this system has been blocked for security reasons,” that “Windows Defender Scan has found a potentially unwanted adware on this device that could steal your passwords, your online identity, your financial information, your personal files, your photos or your documents,” and that visitors should “Call Windows Support” at a displayed phone number. Further evidence (i.e., a report from VirusTotal, a service that analyzes files and URLs for viruses, worms, trojans and other kinds of malicious content) shows that it was also used in connection with malicious or malware activities.

Furthermore, the Complainant proved that the disputed domain name was used in connection with a pay-per-click (“PPC”) or monetized parking page that includes links for services related to the Complainant.

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to the Complainant's TELADOC trademark, since it contains the TELADOC trademarks (those consisting solely of “TELADOC”, as well as those consisting solely of “TELADOC HEALTH”) in its entirety, simply replacing the letter “a” with the letter “e”. The Respondent's use of the letter “e” in place of the letter “a” in the disputed domain name does nothing to diminish confusing similarity.

The Complainant further contends that its trademark TELADOC is well known worldwide.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, it has never assigned, granted, licensed, sold, transferred or in any way authorized the Respondent to register or use the TELADOC trademark in any manner. By using the

disputed domain name in connection with malicious or malware activities, as reported by at least 10 security vendors – including in connection with a tech support scam falsely warning visitors of “adware” on their “system” that “could steal your passwords, your online identity, your financial information, your personal files, your photos or your documents” and encouraging them to “Call Windows Support” at a displayed phone number – the Respondent clearly has not used the disputed domain name “in connection with a bona fide offering of goods or services” and, therefore, cannot establish rights or legitimate interests. In addition, by using the disputed domain name to redirect Internet users to a PPC or monetized parking page that includes links for services related to the Complainant and/or the TELADOC Trademark, the Respondent has failed to create a bona fide offering of goods or services under the Policy – and, therefore, the Respondent cannot demonstrate rights or legitimate interests.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, it is implausible that the Respondent was unaware of the Complainant when it registered the disputed domain name given the notoriety of the trademark. By using the disputed domain name in connection with malicious or malware activities, – including in connection with a tech support scam falsely warning visitors of “adware” on their “system” that “could steal your passwords, your online identity, your financial information, your personal files, your photos or your documents” and encouraging them to “Call Windows Support” at a displayed phone number – the Respondent has acted in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

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

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

In addition, it is the view of this Panel that the simply replacing the letter “a” with the letter “e” in the term “teladoc” in the disputed domain name results to be a common, obvious, or intentional misspelling of the Complainant’s trademark, and cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark since the disputed domain name contains sufficiently recognizable aspects of the relevant mark (see [WIPO Overview 3.0](#) at section 1.9).

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Moreover, the Panel notes that the disputed domain name consists of a common, obvious, or intentional misspelling of the Complainant’s trademark, so that this Panel finds it most likely that employing a misspelling in this way signals an intention on the part of the Respondent to confuse users seeking or expecting the Complainant.

Furthermore, it results from the undisputed evidence before the Panel that the disputed domain name resolves to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant’s trademark or otherwise mislead Internet users (i.e., a parking page displaying PPC links in the Complainant’s area of activity). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent bona fide offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users (see [WIPO Overview 3.0](#) at section 2.9, with further references). This Panel shares this view. Therefore, such use can neither be considered as bona fide offering of goods or services nor 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.

It results from the Complainant’s undisputed and documented allegations the disputed domain name redirected visitors to a website that displays a type of false warning, informing visitors that “Access to this system has been blocked for security reasons,” that “Windows Defender Scan has found a potentially unwanted adware on this device that could steal your passwords, your online identity, your financial information, your personal files, your photos or your documents,” and that visitors should “Call Windows Support” at a displayed phone number. In addition, further evidence (i.e., a report from VirusTotal, a service that analyzes files and URLs for viruses, worms, trojans and other kinds of malicious content) shows that it was also used in connection with malicious or malware activities. This Panel considers these as sufficient prima facie evidence of illegal activity, all the more, since the Respondent did neither submit any explanations nor comments on this warning. Panels have held that the use of a domain name for illegal

activity here malware and the deceptive activity tech support scam can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

One of these circumstances is that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolves to resolved to a parking page displaying PPC links in the Complainant's area of activity. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case and as described above, the Panel notes that the disputed domain name resolves to website showing a false warning informing visitors that "Access to this system has been blocked for security reasons," that "Windows Defender Scan has found a potentially unwanted adware on this device that could steal your passwords, your online identity, your financial information, your personal files, your photos or your documents," and that visitors should "Call Windows Support" at a displayed phone number. In addition, further evidence shows that it was also used in connection with malicious or malware activities. This Panel considers these as sufficient prima facie evidence of illegal activity, all the more, since the Respondent did neither submit any explanations nor comments on this warning. Panels have held that the use of a domain name for illegal activity here, claimed malware and the deceptive activity tech support scam constitutes bad faith, [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <teledochealth.com> be transferred to the Complainant.

*/Federica Togo/*

**Federica Togo**

Sole Panelist

Date: July 8, 2024