

ADMINISTRATIVE PANEL DECISION

TEVA Pharmaceuticals International GmbH v. Privacy Protection/ LIU FEN Case No. D2022-0034

1. The Parties

The Complainant is TEVA Pharmaceuticals International GmbH, Switzerland, represented by SILKA AB, Sweden.

The Respondent is Privacy Protection, United States of America / LIU FEN, China.

2. The Domain Name and Registrar

The disputed domain name <ajovy.xyz> 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 January 5, 2022. On January 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 6, 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 January 7, 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 January 11, 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 January 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 4, 2022.

The Center appointed William R. Towns as the sole panelist in this matter on February 10, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a Switzerland based global pharmaceutical company, and markets its AJOVY brand prescription medicine used for the preventive treatment of migraine in adults. The Complainant has registered its AJOVY trademark in numerous jurisdictions, including the United States of America (“US”), European Union, Canada (“CA”), and Australia (“AU”) as follows:

- AJOVY, US Reg. No. 5633449, applied for November 15, 2016, and registered December 18, 2018;
- AJOVY, European Union Trade Mark (“EUTM”) No. 016411852, applied for February 28, 2017, and registered November 5, 2018;
- AJOVY, CA Reg. No. TMA1077169, applied for May 25, 2017, and registered April 22, 2020;
- AJOVY, AU Trademark No. 1856191, applied for July 3, 2017, and registered February 7, 2018;
- AJOVY, AU Trademark No. 1986888, applied for February 1, 2019, and registered October 8, 2019;
- AJOVY (stylized), US Reg. No. 5645449, applied for May 1, 2018, and registered January 1, 2019;
- AJOVY (stylized), EUTM No. 017955080, filed September 14, 2018, and registered February 27, 2019.

The Respondent registered the disputed domain name on November 15, 2021, and has offered the disputed domain name for sale for USD 688 on a third party website.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is identical or confusingly similar to the AJOVY mark. According to the Complainant, the disputed domain name incorporates the distinctive AJOVY mark and is recognizable in the disputed domain name. The Complainant explains that the generic Top-Level Domain (“gTLD”) “.xyz” does not differentiate the disputed domain name from the Complainant’s mark.

The Complainant maintains that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Complainant explains that it registered the AJOVY mark more than five years before the Respondent registered the disputed domain name. The Complainant emphasizes that AJOVY is a highly distinctive mark, well known globally, and used solely in connection with a drug for treatment of migraine.

The Complainant states that the Respondent has not been licensed or otherwise authorized to use the AJOVY mark. The Complainant submits that the Respondent has not used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services, and characterizes the Respondent’s registration and use of the disputed domain as cybersquatting.

The Complainant submits the Respondent registered and is using the disputed domain name in bad faith, reiterating that the AJOVY mark is highly distinctive in relation to pharmaceutical drugs and used exclusively by the Complainant since the year 2016. The Complainant emphasizes it has registered numerous “ajovy-formative” domain names, and in view of the many new gTLD registrations asserts that the Respondent

would have been aware of the Complainant when registering the disputed domain name.

In view of the foregoing, the Complainant concludes that the Respondent registered the disputed domain name seeking to take undue advantage of the Complainant's rights in its AJOVY mark. The Complainant asserts that the disputed domain name has been registered and used by the Respondent to attract Internet visitors to the Respondent's website, creating a likelihood of confusion with the Complainant's mark in order to sell the disputed domain name online at a substantial asking price.

B. Respondent

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

6. Discussion and Findings

A. Scope of the Policy

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of "the abusive registration of domain names", also known as "cybersquatting". *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#). See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169-177. The term "cybersquatting" is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (i) the 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 with respect to the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Cancellation or transfer of the domain name is the sole remedy provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets forth four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy in turn identifies three means through which a respondent may establish rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, prior UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the view is that the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in the domain name, once the complainant has made a *prima facie* showing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

B. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar and identical to the Complainant's AJOVY mark, in which the Complainant has established rights through registration and use.

In considering identity and confusing similarity, the first element of the Policy serves essentially as a standing requirement.¹ The threshold inquiry under the first element of the Policy involves a relatively straightforward comparison between the Complainant's trademark and the disputed domain name.

The Complainant's AJOVY mark is clearly recognizable in the disputed domain name.² The first element test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.³ The Panel notes that gTLDs are generally disregarded when evaluating the identity or confusing similarity of the complainant's mark to the disputed domain name under paragraph 4(a)(i) of the Policy, irrespective of any ordinary meaning that might be ascribed to the gTLD.⁴ In this case, the disputed domain name is identical to the Complainant's AJOVY mark when the gTLD ".xyz" is disregarded.

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

As noted above, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, paragraph 4(c) shifts the burden of production to the respondent to come forward with evidence of rights or legitimate interests in a domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. The disputed domain name is virtually identical to the Complainant's AJOVY mark, and it is undisputed that the Respondent has not been authorized to use the Complainant's mark. The record nonetheless reflects that the Respondent registered a domain name appropriating the Complainant's AJOVY mark, which was then offered for sale for USD 688.

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in a 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 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 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 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 submitted a formal response to the Complaint, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaint as true. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#). The Panel has carefully reviewed the record in this case, and finds nothing therein that would bring the Respondent's registration and use of the disputed domain name within any of the "safe harbors" of paragraph 4(c) of the Policy.

¹ See WIPO Overview 3.0, section 1.7.

² *Id.*

³ *Id.*

⁴ See WIPO Overview 3.0, section 1.11.2 and cases cited therein.

It is evident from the record in this case that the Respondent was aware of the Complainant and had the Complainant's AJOVY mark firmly in mind when registering the disputed domain name. The record clearly evinces that the Respondent registered the disputed domain name with the intention of exploiting and profiting from the Complainant's mark.

Having regard to the relevant circumstances in this case, and absent any explanation by the Respondent, the Panel concludes that the Respondent has neither used nor undertaken demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. For the reasons discussed above, the Panel holds that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. Nor is there any indication in the record that the Respondent has been commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. In short, nothing in the record before the Panel supports a finding of the Respondent's rights or legitimate interests in the disputed domain name.

Furthermore, the nature of the disputed domain name, being identical to the Complainant's trademark, carries a high risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (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) circumstances indicating that the respondent 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) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt 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 the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. D2004-0230.

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy.

The Panel concludes that the Respondent had the Complainant's AJOVY mark firmly in mind when registering the disputed domain name. The Respondent's registration and use of the disputed domain name clearly is demonstrative of bad faith. The Respondent most likely sought to capitalize on the Complainant's

trademark rights by incorporating the Complainant's distinctive trademark into the identical disputed domain name to create a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's website, with the intention of selling the disputed domain name for an amount likely in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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 <ajovy.xyz> be transferred to the Complainant.

/William R. Towns/

William R. Towns

Sole Panelist

Date: February 22, 2022