

ADMINISTRATIVE PANEL DECISION

Gilead Sciences, Inc. v. Andreas Regalado
Case No. D2022-0055

1. The Parties

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

Respondent is Andreas Regalado, United States.

2. The Domain Name and Registrar

The Disputed Domain Name <gileadap.com> is registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 6, 2022. On January 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On January 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 21, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on January 27, 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 Respondent of the Complaint, and the proceedings commenced on January 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 17, 2022. Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 18, 2022.

The Center appointed Richard W. Page as the sole panelist in this matter on February 24, 2022. 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

Complainant was founded in 1987 in Foster City, California and is one of the largest and most successful biopharmaceutical companies in the world. Complainant discovers, develops, and commercializes innovative medicines in areas of unmet medical need.

In 2020, Complainant's total worldwide revenue was approximately USD 24.3 billion. In 2020, Complainant was listed as #140 in the Fortune 500 Companies rankings. Complainant is regularly listed in the Fortune 500 Companies and Forbes' World's Best Employers rankings.

Complainant develops, manufactures, and offers for sale over 25 pharmaceutical products, including BIKTARVY, EPCLUSA, HARVONI, and TRUVADA. Complainant sells products which prevent and treat HIV infection and products which cure hepatitis C. The launch of Complainant's recently approved pharmaceutical product BIKTARVY was one of the most successful drug launches ever, with sales exceeding USD 4.7 billion in 2019.

Complainant is a member of the S&P 500 and employs approximately 14,500 individuals worldwide.

Some of Complainant's medications have been placed on the World Health Organization's List of Essential Medicines due to their nature as revolutionary treatments and cures of fatal disease, including HARVONIK, a treatment for hepatitis C infections and TRUVADA which is indicated for the prevention of infection by the HIV virus via pre-exposure prophylaxis.

Complainant owns exclusive rights to the GILEAD Mark including rights secured by over 120 trademark registrations around the world and through ongoing use, including but not limited to the following:

- U.S. Registration No. 3,251,595 for GILEAD, registered on June 12, 2007, covering "pharmaceutical preparations, namely, antivirals, antifungal and preparations for the treatment of infectious conditions" in Class 5; and
- U.S. Registration No. 1,611,837 for GILEAD registered on September 4, 1990, covering "pharmaceutical preparations for the treatment of viral diseases, such as AIDS and cancers, for professional medical use" in Class 5.

Complainant is also the owner of the domain name <gilead.com>, which was registered on May 27, 1995, and has been used by the company since as early as 1997 in connection with its pharmaceutical products and related medical services. Complainant and others on its behalf have registered over 340 domain names that incorporate the GILEAD Mark.

The Disputed Domain Name was registered on September 17, 2021. At the time of filing the Complaint, the Disputed Domain Name featured a website with Asian written characters and pornographic content.

5. Parties' Contentions

A. Complainant

Complainant contends that the Disputed Domain Name is confusingly similar to the GILEAD Mark in which Complainant has enforceable rights in violation of paragraph 4(a)(i) of the Policy.

Complainant contends that it owns registrations of the GILEAD Mark, including the specific U.S. registrations identified above.

Complainant further contends that the Disputed Domain Name contains the entirety of the GILEAD Mark, with a descriptive phrase "AP" which is non-distinctive. This makes the Disputed Domain Name confusingly

similar.

Complainant further contends that Respondent has no connection to Complainant and there is no legitimate reason for Respondent to have registered the Disputed Domain Name containing the GILEAD Mark with the indicator "AP" which may stand for "Accounts Payable" or "Asia-Pacific". In either event, the Disputed Domain Name is confusingly similar to the GILEAD Mark. Complainant operates globally with many products sold in Asian countries and Accounts Payable is a common business term for amounts due to vendors or suppliers for goods or services received, which is a concept that applies to Complainant.

Complainant alleges that Respondent has no rights or legitimate interests in the Disputed Domain Name, pursuant to paragraph 4(a)(ii) of the Policy.

Complainant further alleges that Respondent is cybersquatting with the Disputed Domain Name in order to divert traffic from Complainant's genuine website.

Complainant further alleges that Respondent is not associated or affiliated with Complainant. Complainant has not granted any rights to Respondent to use the GILEAD Mark, whether a license to sell any products, or to offer any services, or to register any rights in the Disputed Domain Name.

Complainant further alleges that unsolicited Internet sources and news article demonstrate that the GILEAD brand is well-known and famous for pharmaceutical products and medical information services.

Complainant further alleges that the GILEAD Mark serves as a valuable identifier of Complainant as well as its various goods and services such as its pharmaceutical medications, health information and education services, and its pharmaceutical research and charitable services. Through longstanding use and the tremendous success of its products, the GILEAD name has gained significant recognition in the United States and throughout the world. Complainant has been the subject of hundreds of unsolicited news articles in the *Washington Post* and national television and radio networks, thrusting Complainant and the GILEAD brand into the limelight. The GILEAD Mark is famous and well-known.

Complainant further alleges that in the wake of the COVID-19 pandemic, Gilead has only become more well-known and famous as a household brand. There has been extensive media coverage of Complainant and its antiviral drug remdesivir, which is currently being studied as a treatment to COVID-19 in China and the United States. Complainant's use of the GILEAD name for over 30 years is in itself evidence that the Mark is well-known.

Complainant further alleges that the Disputed Domain Name currently features a website with Asian written characters and pornographic content, including inappropriate and sensitive content as part of Respondent's website.

Complainant further alleges that Respondent is taking advantage of the GILEAD Mark which has a strong reputation generally and in the pharmaceutical industry, in order to divert traffic to Respondent's own website.

Complainant further alleges that Respondent willfully adopted the GILEAD Mark within the Disputed Domain Name in an attempt to unfairly capitalize on the valuable goodwill Complainant has built in the GILEAD Mark, with the intention of diverting search and web traffic for Respondent's own commercial gain. Respondent registered the Disputed Domain Name containing the GILEAD Mark over thirty years after Complainant entered the biopharmaceutical industry. None of this activity constitutes a *bona fide* sale of goods or services by Respondent.

Complainant further alleges that there is no indication that Respondent is commonly known by the name GILEAD. The name GILEAD does not appear in Respondent's WHOIS record, which offers no way to contact Respondent.

Complainant further alleges that the GILEAD Mark is so well known that and recognized, there can be no legitimate use by Respondent.

Complainant further alleges that featuring pornographic content on the Website makes clear that the Respondent has no legitimate rights or interests in the Disputed Domain Name, but is using the GILEAD Mark for its own commercial gain with the intent of tarnishing the GILEAD brand.

Complainant asserts that Respondent has registered and is using the Disputed Domain Name in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

Complainant incorporates all of the contentions and allegations above to show Respondent's bad faith. Also, Complainant asserts that Respondent's use of a privacy shield to hide contact information is additional evidence of Respondent's bad faith.

Complainant further asserts that Respondent had actual and constructive knowledge of the GILEAD Mark and Complainant's rights due to the longstanding worldwide trademark registrations covering the GILEAD Mark.

Complainant further asserts that Respondent's activities satisfy the elements of paragraph 4(b)(iv) of the Policy and demonstrate Respondent's bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the GILEAD Mark in which Complainant has rights; and
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Complainant contends that it has numerous registrations for the GILEAD Mark, which contentions are supported by annexes to the Complaint. Section 1.2.1 of the [WIPO Overview 3.0](#) states that registration of a trademark is *prima facie* evidence of Complainant having enforceable rights in the GILEAD Mark.

The Panel finds that Complainant, for purposes of this proceeding, has enforceable rights in the GILEAD Mark.

Complainant further contends that the Disputed Domain Name is identical with and confusingly similar to the GILEAD Mark pursuant to paragraph 4(a)(i) of the Policy.

Section 1.7 of the [WIPO Overview 3.0](#) says that inclusion of the entire trademark in a domain name will be considered confusingly similar. Section 1.8 of the [WIPO Overview 3.0](#) instructs that the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity. Also see Section 1.11.1 of the [WIPO Overview 3.0](#) which instructs that generic Top-Level Domains (“gTLDs”) such as “.com” may be disregarded for purposes of assessing confusing similarity.

The Panel finds that the entirety of the GILEAD Mark is included in the Disputed Domain Name and that the remainder of the Disputed Domain Name is non-distinctive.

Therefore, Complainant has satisfied the elements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant alleges that Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraph 4(a)(ii) of the Policy.

Section 2.1 of the [WIPO Overview 3.0](#) states that once Complainant makes a *prima facie* case in respect of the lack of rights or legitimate interests of Respondent, Respondent carries the burden of demonstrating it has rights or legitimate interests in the Disputed Domain Name. Where Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or a legitimate interest in the Disputed Domain Name:

(i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or

(iii) you [Respondent] are 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 GILEAD Mark.

Complainant further alleges that Respondent is not associated or affiliated with Complainant. Complainant has not granted any rights to Respondent to use the GILEAD Mark, whether a license to sell any products or to offer any services, or any right to register the Disputed Domain Name.

Complainant further alleges that featuring pornographic content on the Website makes clear that the Respondent has made no *bona fide* use and has no legitimate rights or interests in the Disputed Domain Name, but is using the GILEAD Mark for its own commercial gain.

Complainant further alleges that the Disputed Domain Name currently features a website with Asian written characters and pornographic content, including inappropriate and sensitive content as part of Respondent’s website.

Complainant alleges that none of this activity constitutes a *bona fide* use of the Disputed Domain Name.

Complainant further alleges that there is no indication that Respondent is commonly known by the name GILEAD. The name GILEAD does not appear in Respondent’s Whois record, which offers no way to contact Respondent.

Complainant further alleges that Respondent is cybersquatting with the Disputed Domain Name in order to divert traffic from Complainant's genuine website. Complainant further alleges that Respondent willfully adopted the GILEAD Mark within the Disputed Domain Name in an attempt to unfairly capitalize on the valuable goodwill Complainant has built in the GILEAD Mark, with the intention of diverting search and web traffic for Respondent's own commercial gain. Respondent registered the Disputed Domain Name containing the GILEAD Mark over 30 years after Complainant entered the biopharmaceutical industry.

Complainant further alleges that the GILEAD Mark is so well known that and recognized, there can be no legitimate use by Respondent.

Respondent has not contested any of the allegations by Complainant that Respondent lacks rights and legitimate interests in the Disputed Domain Name.

The Panel finds that Complainant has made a *prima facie* case that Respondent lacks rights and legitimate interests in the Disputed Domain Name, without refutation from Respondent.

Therefore, Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Complainant asserts that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

- (i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the GILEAD Mark or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) you [Respondent] have registered the Disputed Domain Name in order to prevent Complainant from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the GILEAD Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product.

Complainant asserts Respondent is cybersquatting with the Disputed Domain Name in order to divert traffic from Complainant's genuine website. Complainant repeatedly alleges that Respondent willfully adopted the GILEAD Mark within the Disputed Domain Name in an attempt to unfairly capitalize on the valuable goodwill Complainant has built in the GILEAD Mark, with the intention of diverting search and web traffic for Respondent's own commercial gain. Respondent registered the Disputed Domain Name containing the GILEAD Mark over 30 years after Complainant entered the biopharmaceutical industry.

The Panel finds that Complainant has established the elements of bad faith set forth in paragraph 4(b)(iv) of the Policy.

Complainant further alleges that the GILEAD Mark serves as a valuable identifier of Complainant as well as its various goods and services such as its pharmaceutical medications, health information and education services, and its pharmaceutical research and charitable services. Through longstanding use and the tremendous success of its products, the GILEAD name has gained significant recognition in the United States and throughout the world. Complainant has been the subject of hundreds of unsolicited news articles and national television and radio networks, thrusting Complainant and the GILEAD brand into the limelight. The GILEAD Mark is famous and well-known.

Complainant further alleges that in the wake of the COVID-19 pandemic, Gilead has only become more well-known and famous as a household brand. There has been extensive media coverage of Complainant and its antiviral drug remdesivir, which is currently being studied as a treatment to COVID-19 in China and the United States. Complainant's use of the GILEAD name for over 30 years is in itself evidence that the Mark is well-known. Prior panels have held that mere registration of a confusingly similar domain name to a well-known trademark by an unaffiliated entity can by itself support a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

The Panel also finds that Respondent has actual and constructive knowledge of Complainant's rights in the GILEAD Mark.

The Panel finds that Complainant has also established additional elements of bad faith under *Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), considering Respondent's silence in the face of this administrative proceeding and the lack of any credible good-faith use to which the Disputed Domain Name may be put. Moreover, considering the pornographic content exhibited under the confusingly similar Disputed Domain Name, the Panel finds such use is likely to tarnish the Complainant's reputation and goodwill in the GILEAD mark since unsuspecting users will believe some connection due to the incorporation of the GILEAD mark in its entirety in the Disputed Domain Name.

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, <gileadap.com> be transferred to the Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: March 3, 2022