

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Ltd. v. Solomon sherif
Case No. D2023-1279

1. The Parties

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

The Respondent is Solomon sherif, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <tevabiopharm.com> is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on March 24, 2023. On March 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 24, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 27, 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 March 28, 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 March 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 25, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on May 4, 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

It results from the Complainant's documented allegations that the Complainant was established in 1901 and is today one of the world's largest generic medicines producers being active in over 60 countries and employing approximately 43,000 persons around the world.

The Complainant is the owner of several trademark registrations consisting of or containing the term "teva". In particular, the Complaint is based on the United States of America Trademark registration No. 1567918 for TEVA registered on November 28, 1989, for goods in class 5.

The disputed domain name was registered on February 11, 2023. It results from the Complainant's documented allegations that the disputed domain name resolves to an inactive parking website of the Registrar ("This domain is registered, but may still be available...").

5. Parties' Contentions

A. Complainant

Firstly, the Complainant points out that the disputed domain name is confusingly similar to the registered mark TEVA since directly incorporates the Complainant's registered trademark in its entirety. The mere addition of the word "biopharm" only reinforces the (false) association between the trademark and the disputed domain name. The addition of the generic Top-Level domain ("gTLD") ".com" does not differentiate the disputed domain name from the trademark.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the disputed domain name has been passively held and there is no demonstrable preparation to use visible in terms of the Policy. The Respondent is not making a fair use of the disputed domain name, since the Respondent has used the said disputed domain name, which is based on the Complainant's TEVA mark, to a parked website.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. TEVA is a registered trademark and it is highly unlikely that the Respondent was not aware of the registered rights the Complainant would assume in the trademark and the value of said trademark, at the point of the registration. The Respondent bears no relationship to the trademark and the disputed domain name has no other meaning except for referring to the Complainant's name and trademark and there is no way in which the disputed domain name could be used legitimately. Finally, the Respondent uses a privacy shield.

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 the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should 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;

- (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 is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first of all establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to said mark.

The Complainant is the registered owner of the United States of America Trademark registration No. 1567918 for TEVA registered on November 28, 1989, for goods in class 5.

The disputed domain name entirely incorporates the TEVA trademark and places it at the beginning of the disputed domain name. As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, "in cases where a domain name incorporates the entirety of a trademark, or at least where a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for the purposes of UDRP standing." Furthermore, "in particular, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element" (see [WIPO Overview 3.0](#), section 1.8). In the case at hand, the Panel finds that the trademark TEVA is readily recognizable in the disputed domain name. Under these circumstances, the addition of the term "biopharm" does not prevent the finding of confusing similarity.

Finally, the gTLD ".com" of the disputed domain name may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1).

Hence, this Panel finds that the disputed domain name is identical or confusingly similar to the Complainant's trademark TEVA pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name. In the Panel's view, based on the unrebutted allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complainant's undisputed allegations, no content is displayed on the website to which the disputed domain name resolves. Such use can neither be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name in the sense of paragraph 4(c)(i) and (iii) of the Policy (see, e.g. *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1531](#)). This Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the Complainant's registered trademark TEVA by registering the disputed domain name containing that trademark.

Finally, the Panel does not dispose of any elements that could lead the Panel to the conclusion that the Respondent is commonly known by the disputed domain name or that it has acquired trademark rights pursuant to paragraph 4(c)(ii) of the Policy.

It is acknowledged that once the Panel finds such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. Since the Respondent in the case at hand failed to come forward with any allegations or evidence in this regard, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the Complainant's undisputed allegations, the Respondent does not actively use the disputed domain name. With comparative reference to the circumstances set out in paragraph 4(b) of the UDRP deemed to establish bad faith registration and use, prior UDRP panels have found that the apparent lack of active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith under the doctrine of passive holding (see, e.g. *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1531](#)). The Panel must therefore examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Factors that have been considered relevant in applying the passive holding doctrine include:

- (i) the degree of distinctiveness or reputation of the Complainant's mark;
- (ii) the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use;
- (iii) the Respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement); and
- (iv) the implausibility of any good faith use to which the domain name may be put (see [WIPO Overview 3.0](#), section 3.3).

In the case at hand, the Panel considers the following circumstances surrounding the registration as suggesting that the Respondent was aware that it has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith:

- (i) the intrinsic distinctiveness of the trademark TEVA, which long predates the registration of the disputed domain name;
- (ii) the Respondent's concealing its identity behind a privacy shield; and
- (iii) the Respondent's failure to respond to this Complaint.

In addition, due to these circumstances this Panel concludes that the Respondent knew or should have known the trademark TEVA when it registered the disputed domain name, and that there is no plausible legitimate active use that the Respondent could make of the disputed domain name.

In the light of the above, and in the absence of any explanations by the Respondent, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has therefore satisfied the third element, 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 <tevabiopharm.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: May 16, 2023