

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Ltd v. Dawson Egbe
Case No. D2023-3278

1. The Parties

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

The Respondent is Dawson Egbe, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <tevapharmaceuticalss.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 July 31, 2023. On July 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 31, 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 August 1, 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 August 2, 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 August 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 29, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on September 5, 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

The Complainant is an internationally active and widely known pharmaceutical company, which was established in 1935.

The Complainant is the owner of the TEVA trademark, which is registered in many jurisdictions worldwide (Annex 8 to the Complaint). Among others, the Complainant is the owner of the International Trademark No. 1319184, registered on June 15, 2016, for TEVA, covering protection for pharmaceutical and related goods and services (Annex 7 to the Complaint).

In addition, the Complainant owns and operates its official website at “www.tevapharm.com”.

The Respondent is reportedly located in Cameroon.

The disputed domain name was registered on July 13, 2023.

As evidenced by screenshots in the Complaint (Annex 14 to the Complaint), the disputed domain name resolves to a website in English language that prominently uses the Complainant’s TEVA trademark and part of its company name, without providing for a visible disclaimer describing the (lack of) relationship between the Parties. At that website, a number of medicinal products of pharmaceutical companies other than the Complainant are purportedly offered to Internet users (Annexes 14 and 15 to the Complaint). Furthermore, the Respondent has configured MX records for the disputed domain name, which enables the Respondent to send and receive emails using the disputed domain name (Annex 17 to the Complaint).

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.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel might, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

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 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in the TEVA trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

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

While the addition of other terms, here "pharmaceuticals" plus the letter "s", may bear on assessment of the second and third elements, the Panel finds the addition of such term and letter does not prevent a finding of confusing similarity between the disputed domain name and the TEVA mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

While 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 often impossible 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. 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 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.

The Panel particularly finds that the Respondent cannot be assessed as a legitimate dealer for the Complainant's products in light of *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("*Oki Data*") and thus is not entitled to use the disputed domain name accordingly. The criteria as set forth in *Oki Data* are apparently not fulfilled in the present case.

The Panel notes that the website, which is linked to the disputed domain name does not accurately and prominently disclose the relationship, or rather the lack thereof, between the Respondent and the Complainant, thus creating the false impression that the website associated to the disputed domain name is operated by the Complainant or at least with its authorization. In addition, the Panel notes that the website at the disputed domain name purportedly offers for sale pharmaceutical products of third party origin. Furthermore, this assessment is supported by the nature of the disputed domain name, which in view of the Panel carries a risk of implied affiliation or association, as stated in section 2.5.1 of the [WIPO Overview 3.0](#). The Panel is convinced that the Respondent intended such implied affiliation in order to mislead Internet users with regard to the origin of the products allegedly offered on the website associated to the inherently misleading disputed domain name. The Panel also notes that the website connected to the disputed domain name contains a section where Internet users can register and create a user account. Prior UDRP panel decisions have recognized similar risks in relation to phishing and considered it as additional evidence of bad faith.

In view of the Panel, all this results in an illicit use that *per se* cannot confer rights or legitimate interests upon the Respondent. See [WIPO Overview 3.0](#), section 2.13.

Based on the available record, 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.

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. See [WIPO Overview 3.0](#), section 3.2.1.

In the present case, the Panel notes that the Respondent must have had the Complainant and its TEVA trademark in mind when registering the disputed domain name. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target and mislead third parties. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain name in bad faith, the Panel finds that the Respondent has intentionally registered the disputed domain name in order to generate traffic to its own website by misleading third parties in a false belief that the associated website is operated or at least authorized by the Complainant, apparently for the purpose of illegally selling pharmaceuticals.

Panels have held that the use of a domain name for such illegal activity (*i.e.*, illegally offering pharmaceuticals) constitutes bad faith. See [WIPO Overview 3.0](#), section 3.4.

Furthermore, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith. Also, the Panel believes that the activated MX email server for the disputed domain name creates a real or implied ongoing threat to the Complainant and supports the Panel's finding on bad faith.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <tevapharmaceuticalss.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: September 19, 2023