

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Limited v. Webb Crawford
Case No. D2023-4296

1. The Parties

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

The Respondent is Webb Crawford, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <tevaitalia-it.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 October 17, 2023. On October 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 17, 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 October 19, 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 October 20, 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 October 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 17, 2023.

The Center appointed Aaron Newell as the sole panelist in this matter on November 30, 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

- i) asserts that it is a well-known pharmaceutical company that has been in operation for over 120 years, maintaining a portfolio of over 3,600 products, providing medicine to over 200 million people across 60 countries every day, and employing over 37,000 people across 33 countries;
- ii) operates its primary consumer-facing website at “www.tevapharm.com” and owns a number of other TEVA-formative domain names, including <tevaitalia.it> which it uses for a website directed at the Italian market;
- iii) owns a number of registered trade mark rights in the name TEVA, including United States trade mark registration no. 1567918 TEVA (a word mark) registered on November 28, 1989, in class 5 and covering, *inter alia*, pharmaceutical preparations;
- iv) filed at least five UDRP cases in 2023 alone that resulted in transfer of the subject domain names;
- v) provides evidence demonstrating that the disputed domain name has been used to send emails to a customer of the Complainant from an account that impersonates one of the Complainant’s Italy-based employees. These emails attempt to solicit payment from the customer to a bank account that is not under the control of the Complainant.

The Respondent did not respond to the Complaint and did not engage with the proceedings.

The disputed domain name was registered on September 19, 2023. As at the date of writing, the disputed domain name did not load a website. The publicly-available Whois information shows a privacy service as the recorded registrant of the disputed domain name as at the date of this decision.

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:

- i) the disputed domain name fully incorporates its well-known and registered TEVA trade mark and therefore is confusingly similar with a mark in which the Complainant has rights;
- ii) the Respondent owns no relevant rights in the disputed domain name or any similar term and is not licensed by the Complainant to register domain names featuring the Complainant’s TEVA trade mark or any variant thereof;
- iii) the Respondent has not used or prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services;
- iv) for the reasons above at ii) and iii) the Respondent does not have rights or a legitimate interest in the disputed domain name;
- v) the Respondent has used the disputed domain name to misleadingly impersonate an employee of the Complainant with the intention of misdirecting payment from an Italy-based customer of the Complainant to a bank account not controlled by the Complainant, and that this demonstrates that the Respondent has registered and used the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove:

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

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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel further finds that the entirety of the mark is reproduced within and 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.

Although the addition of the terms "italia-it" may bear on assessment of the second and third elements, the Panel finds that the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [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.

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.

Panels have held that the use of a domain name for illegal activity such as phishing and/or impersonation/passing off as claimed by the Complainant in the present case can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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. This includes the circumstances set out under paragraph 4(b)(iv) where:

“by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the respondent’s web site or location or of a product or service on the respondent’s web site or location.”

Panels have found that the following types of evidence support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant’s mark: (i) actual confusion and (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent’s commercial benefit, even if unsuccessful

Panels have also held that the use of a domain name for illegal activity such as phishing or impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

In the present case, the Panel notes that the Respondent has failed to rebut or challenge the Complainant’s *prima facie* compelling evidence that the Respondent has used the disputed domain name to impersonate the Complainant’s employee in order to direct payment from a customer of the Complainant to a bank account not affiliated with the Complainant.

Accordingly, having reviewed the available record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy, and 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 <tevaitalia-it.com> be transferred to the Complainant.

/Aaron Newell/

Aaron Newell

Sole Panelist

Date: December 14, 2023