

## **ADMINISTRATIVE PANEL DECISION**

Actavis Group PTC ehf and Actavis Holdco U.S., INC. v. Milen Radumilo  
Case No. DCO2022 -0088

### **1. The Parties**

The Complainants are Actavis Group PTC ehf, Iceland and Actavis Holdco U.S., INC., United States of America ("United States"), represented by SILKA AB, Sweden.

The Respondent is Milen Radumilo, Romania.

### **2. The Domain Name and Registrar**

The disputed domain name <activis.com.co> is registered with Communigal Communications Ltd. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 17, 2022. On October 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 20, 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 Complainants on the same day, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint on October 21, 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 October 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 21, 2022.

The Center appointed Elise Dufour as the sole panelist in this matter on November 23, 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**

The Complainants are the companies Actavis Group PTC ehf and Actavis Holdco U.S., INC., which are part of a global pharmaceutical group focused on acquiring, developing, manufacturing and marketing branded pharmaceuticals, generic and over-the-counter medicines, and biologic products.

The Complainants are affiliates of Teva Pharmaceutical Industries Ltd. They develop, manufacture, and market generic pharmaceutical products, including cough syrup.

The Complainants have a presence in over 100 countries and jointly hold over 300 trademarks registration for ACTAVIS, including the following:

- International trademark ACTAVIS, No. 827298, registered on March, 15, 2004 and duly renewed for products and services in international classes 1, 3, 5, 10, 42 and 44;
- European Union trademark ACTAVIS, No. 003615721, registered on January 1, 2006 and duly renewed for products and services in international classes 1, 3, 5, 10, 42 and 44;
- United States trademark ACTAVIS, No. 3845070, registered on September, 7, 2010 and duly renewed for products and services in international class 5; and
- Iceland trademark ACTAVIS, No. 963/2003, registered on November 28, 2003 and duly renewed for products and services in international class 5.

The disputed domain name <activis.com.co> was registered on July 23, 2022, by the Respondent located in Romania. The disputed domain name used to resolve to a pay-per-click ("PPC") website with a "Buy This Domain" link to GoDaddy. The disputed domain name now resolves to a website that triggers to a safety warning page.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainants are joint owners of the ACTAVIS trademarks and therefore wish to proceed with a consolidated complaint. More specifically, each of the Complainants owns one or more registrations for the ACTAVIS mark (as a word mark and in a stylized form) for generic pharmaceuticals and related goods in various jurisdictions.

The Complainants claim that the disputed domain name is (i) identical or confusingly similar to their trademarks, (ii) that the Respondent has no rights or legitimate interests in the disputed domain name, and (iii) that the disputed domain name has been registered and is being used in bad faith.

i) The Complainants claim that the disputed domain name is confusingly similar to their ACTAVIS trademarks, and that it is a typo since the disputed domain name has no meaning in any language and seems to reproduce the ACTAVIS trademark wherein the fourth letter "a" has been replaced with the letter "i".

(ii) The Complainants state that the Respondent has no rights or legitimate interests in respect of the disputed domain name and the Complainants have not licensed or otherwise permitted the Respondent to use their ACTAVIS trademarks. Furthermore, the Complainants contend that the fact that the disputed domain name is redirecting to a parking page hosting PPC links to third party websites in the same business as the Complainants indicates the Respondent aims at portraying a connection with the Complainants' activity and profiting from their goodwill and reputation. As such the Complainants assert that the

Respondent has not used or made preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services.

(iii) Due to the wide usage and the well-known character of the Complainants' trademarks, the Complainants assert that it is inconceivable that the registration of the disputed domain name was made without full knowledge of the existence of the Complainants and their well-known trademarks. The Complainants further assert that the fact that the disputed domain name leads to a PPC website for links related to the Complainants' activity as well as the fact that the Respondent is offering the disputed domain name for sale for a price significantly higher than the disputed domain name's value demonstrate the Respondent's bad faith.

The Complainants request the transfer of the disputed domain name.

## **B. Respondent**

The Respondent did not reply to the Complainants' contentions.

## **6. Discussion and Findings**

### **6.1 Procedural matter - Consolidated complaint**

As stated in section 4.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ([WIPO Overview 3.0](#)), in order for multiple complainants to file a single complaint against a single respondent, the complainants must accompany the complaint by a request for consolidation which establishes the following criteria:

- (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion; and
- (ii) it would be equitable and procedurally efficient to permit the consolidation.

The Panel finds that consolidation in this case is proper.

First, the Complaint included evidence of trademark registrations owned by both Actavis Holdco US, INC. and Actavis Group PTC ehf.

Second, the Complainants are part of the same group of companies.

Where one or more complainants have the same grievance against a respondent and it is equitable and procedurally efficient to do so, permitting the affiliated entities to file a consolidated complaint may be appropriate.

Thus, the consolidation is proper, pursuant to the Rules, paragraph 10(e).

### **6.2 Substantive issues**

In the absence of a formal response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent.

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainants must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and

- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

#### **A. Identical or Confusingly Similar**

The Complainants have provided evidence to establish their rights over the ACTAVIS trademarks.

The disputed domain name <activis.com.co> reproduces the Complainants' trademarks ACTAVIS, with the exception that the fourth letter of the disputed domain name "i" replaces the letter "a" in the original trademarks owned by the Complainants.

The Panel finds that such misspelling of the Complainants' trademark on the disputed domain name is intentional and constitutes a form of typosquatting. Indeed, this inversion of letters does not seem to be the result of a coincidence as both "I" and "A" letters are contained in the Complainants' trademarks. See section 1.9 of the [WIPO Overview 3.0](#).

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" and the country-code Top-Level Domain (ccTLD) ".co" are viewed as a standard registration requirement and as such are disregarded under the first element confusing similarity test. See section 1.11 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainants' earlier trademarks. Thus, the requirement of paragraph 4(a)(i) of the Policy is met.

#### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a nonexclusive list of circumstances that indicate the Respondent's rights to or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent's 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) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the Respondent is 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 trademark or service mark at issue.

The Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights to and/or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainants to make a *prima facie* case against the Respondent.

The disputed domain name has no particular meaning, and it is not a descriptive or dictionary term serving to indicate specific characteristics of any goods or services.

The Complainants assert that the Respondent is not sponsored by or affiliated with the Complainants in any way, nor is he commonly known by the disputed domain name.

The disputed domain name used to lead to a parking page that presented PPC links to third party websites in the same field as the Complainants' activities.

The disputed domain name now resolves to a page that triggers a safety warning notice.

The fact that the disputed domain name is resolving to a blank page that triggers a safety warning notice is further evidence that the Respondent has not used or made preparations to use the disputed domain name in relation to a *bona fide* offering of goods or services. There is no evidence either suggesting that the Respondent has been making a legitimate, non commercial use of the disputed domain name.

As such, the Panel finds that the use of the disputed domain name does not represent a *bona fide* offering of goods and services and creates a false association between the Complainants' trademarks and the disputed domain name.

For all of the above reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect to the disputed domain name.

### **C. Registered and Used in Bad Faith**

The Complainants have submitted evidence that its trademark is widely used and has acquired a certain level of reputation in its business. As such, the Respondent must have known of the Complainants' well-known trademarks. Such registration of a domain name that is confusingly similar (particularly domain names comprising typos) to a well-known trademark by a party with no connection to the owner of the trademark can by itself create a presumption of bad faith, as it points to an intention to confuse Internet users seeking for or expecting the Complainants (See section 3.1.4 of the [WIPO Overview 3.0](#)).

Furthermore, the fact that the disputed domain name used to resolve to a parked page including links to third websites related to health indicates that the Respondent has registered and used the disputed domain name in bad faith in order to benefit from the Internet traffic resolving to the Respondent's website. In doing so, the Respondent was most likely seeking commercial gain from the confusion between the Complainants' trademarks and the disputed domain name.

The fact that the disputed domain name now redirects Internet users to a website with a warning is further evidence that disputed domain name was registered and is being used in bad faith.

For all of the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, the disputed domain name has been registered and is being used in bad faith.

## **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, <activis.com.co> be transferred to the Complainants.<sup>1</sup>

/Elise Dufour/

**Elise Dufour**

Sole Panelist

Date: December 7, 2022

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<sup>1</sup> The Complaint requests that the domain name be transferred to "Complainant" but does not specify which Complainant.