Decision for dispute CAC-UDRP-101161

Case number	CAC-UDRP-101161
Time of filing	2016-01-27 10:30:58
Domain names	tevapharmaceuticalslimited.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	Matkowsky Law PC

Respondent

Name	AMY KINJO

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns the following registered trademarks:

- TEVA (figurative), Singapore national trademark no. T9111063A, filing of December 18, 1991, registered for pharmaceutical, veterinary and sanitary preparations in class 5;

- TEVA (figurative), Australian national trademark no. 567236, of November 13, 1991, registered for pharmaceutical substances and compositions for human and veterinary purposes; air purifying medicated antiseptics and detergents; and all other goods in class 5;

- TEVA (word), Community Trade Mark no. 1192830 of July 18, 2000, registered for goods in classes 3, 5 and 10 for, inter alia, pharmaceuticals and other preparations for medical purposes; and

- TEVA (word), United States national trademark no. 1,567,918 of November 28, 1989, registered for pharmaceutical, veterinary and sanitary preparations in class 5.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Founded in 1901, the Complainant is a leading global pharmaceutical company and the world's largest generic medicines producer, leveraging its portfolio of more than 1,000 molecules to produce a wide range of generic products in nearly every therapeutic area. The Complainant's revenues in 2014 amounted to USD 20.3 billion. The TEVA trademarks as identified above (the "Trademarks") are famous and well-known globally in the pharmaceutical and life sciences sector, protected in numerous countries worldwide. Prior domain dispute resolution panels throughout the world have consistently recognized Petitioner's rights in the Trademarks

The disputed domain incorporates the entirety of the Trademarks, with the addition of generic terms used in the Complainant's trade name and of which reinforces the product-line associated with Complainant's mark. The ".com" top-level suffix in the disputed domain name is disregarded under the confusing similarity test as it is a technical requirement of registration. Therefore, the Complainant is of the opinion that the disputed domain name is confusingly similar to the Trademarks.

The Complainant contends it has not authorized the Respondent to use the Trademarks in any capacity, and the Respondent is not known by the disputed domain name. The disputed domain name was registered for purposes of carrying out phishing attacks spoofing the Complainant's identity for its own financial gain. The Respondent's objective is to pass itself off as the Complainant to further a phishing scheme and thereby defraud third parties. Using the disputed domain name in this manner is neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use.

The Complainant claims and provides evidence the Respondent clearly had actual knowledge of the Complainant's rights in the Trademarks prior to registering the disputed domain name, as the generic terms incorporated in the disputed domain name are actually part of the Complainant's trade name, have a direct associated with the goods covered by the Trademarks, and clearly intend to spoof the Complainant's identity. The Respondent's registration of the disputed domain name obviously intended to create confusion with the Complainant, together with its use of the disputed domain name in connection with a fraudulent scheme involving email messages attempting to defraud, whether it be the Complainant, its vendors, or other third-parties, by exploiting that confusion, is indicative of bad faith. It has been demonstrated that the Respondent is using the disputed domain name to control one or more email addresses which falsely appear to be originating from the Complainant. Any emails sent from an account on the disputed domain name will certainly confuse recipients into mistakenly believing that the email is from the Complainant. The only plausible explanation to use proxy registration services to register the disputed domain name and use it for an email address would be for the Respondent's own financial gain in spoofing the Complainant's identity to the detriment of others as well as the Complainant.

The disputed domain name was registered on January 23, 2016.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

In support of these UDRP proceedings, the main Complainant's contentions are the following.

1. Confusing similarity. ICANN Rule 3(b)(ix)(i); Policy, paragraph 4(a)(i).

The disputed domain incorporates the entirety of the Trademarks, with the addition of generic terms used in the Complainant's trade name and of which reinforces the product-line associated with Complainant's mark. The ".com" top-level suffix in the disputed domain name is disregarded under the confusing similarity test as it is a technical requirement of registration. Therefore, the disputed domain name is confusingly similar to the Trademarks.

2. Rights or Legitimate Interests. ICANN Rule 3(b)(ix)(2); Policy, paragraph 4(a)(ii).

The Complainant points out that while the overall burden of proof rests with the Complainant, the Complainant is required to

make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of proof shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name.

The Complainant has not authorized Respondent to use the Trademarks in any capacity, and Respondent is not known by the disputed domain name. The disputed domain name was registered for purposes of carrying out phishing attacks spoofing the Complainant's identity for its own financial gain. The Respondent's objective is to pass itself off as the Complainant to further a phishing scheme and thereby defraud third parties. Using the disputed domain name in this manner is neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use.

3. Registered and used in Bad Faith. ICANN Rule 3(b)(ix)(3); Policy, paragraph 4(c)(iii).

The Respondent had actual knowledge of the Complainant's rights in the Trademarks prior to registration of the disputed domain name, and clearly intend to spoof the Complainant's identity. It has been demonstrated that Respondent is using the disputed domain name to control one or more email addresses which falsely appear to be originating from the Complainant. Any emails sent from an account on the disputed domain name will confuse recipients into mistakenly believing that the email is from the Complainant.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. The disputed domain name is identical or confusingly similar to a Complainant's trademark (Paragraph 4(a)(i)of the Policy).

The Panel is satisfied that this condition is met. It is well established that the generic Top-Level Domains ("gTLDs") may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy (e.g., Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).
The Trademarks are incorporated in the disputed domain name in their entirely, while the added term "pharmaceuticalslimited" is generic as "pharmaceuticals" refers to the nature of the Complainant's business and "limited" to the type of the complainant's business.

2. The Respondent's lack of rights or legitimate interests in the disputed domain name (paragraph 4(a)(ii)of the Policy)

The Complainant must show a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, which the Respondent may rebut (e.g., Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455). The Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name as it was not contested that the Complainant has not authorized the

Respondent to use the Trademarks as part of the disputed domain names, and the Respondent is not known by the disputed domain name. Further, the Panel is satisfied that the Complainant showed that the disputed domain name was registered for purposes of carrying out phishing attacks spoofing the Complainant's identity for its own financial gain. Using the disputed domain name in this manner is neither a bona fide offering of goods or services, nor a legitimate noncommercial or fair use.

3. The disputed domain name has been registered and is being used in bad faith (paragraph 4(c)(iii) of the Policy)

The Panel finds that the disputed domain name was registered in bad faith as the Respondent should have been aware of the Trademarks when the Respondent registered the disputed domain name given the Trademark's reputation and the addition of the elements of the Complainant's trade name. The Panel is also satisfied that the Respondent used disputed domain name as the use for carrying out phishing attacks spoofing the Complainant's identity for its own financial gain (e.g. CAC Case No. 100921).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **TEVAPHARMACEUTICALSLIMITED.COM**: Transferred

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2016-02-29

Publish the Decision