Decision for dispute CAC-UDRP-101368

Case number	CAC-UDRP-101368
Time of filing	2016-12-14 09:56:28
Domain names	ACTAVISMAIL.COM

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Actavis Group PTC ehf

Complainant representative

Organization	RiskIQ, Inc.

Respondent

Organization	ICS INC

IDENTIFICATION OF RIGHTS

The Complainant uses the domain name <actavis.com> which redirects to its official website http://www.tevapharm.com/, and is also the owner of the European Union trademark ACTAVIS No. 003615721, dated December 18, 2003.

FACTUAL BACKGROUND

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

The Complainant is an indirect, wholly owned subsidiary of Teva Pharmaceutical Industries Ltd., which is a leading global pharmaceutical company headquartered in Israel and the world's largest generic medicines producer. The Complainant uses the domain name <actavis.com>" which redirects to its official website http://www.tevapharm.com/ and is also the owner of the European Union trademark ACTAVIS No. 003615721, filed on December 18, 2003 and registered on January 16, 2006 in Nice classes 1,3,5,10,42 and 44.

The Respondent registered the Disputed domain name <actavismail.com> on July 11, 2016. The Disputed domain name currently redirects towards several pages, including a parking page containing various commercial links and the website http://www.freelotto.com. The Respondent has also set up email servers on the Disputed domain name.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed 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 Disputed 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 Disputed 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

I. As the respondent did not file an administratively compliant Response, pursuant to paragraph 14(b) of the Rules, the Panel may draw such inferences therefrom as it considers appropriate.

II. The Panel finds that the Disputed domain name wholly incorporates the Complainant's trademark "ACTAVIS " together with the generic term "mail", which enhances the likelihood of confusion as Internet users could believe that emails sent from an @actavismail.com address originate from the Complainant (See e.g. America Online, Inc. v. Simo Elbaz, AF0306000165950, Nat. Arb. Forum). Furthermore, the Panel agrees with the well-established view according to which the gTLD <.com> is to be disregarded under the test for identity or confusing similarity as it is only a technical requirement (See e.g. Boehringer Ingelheim International GmbH v. Ralf Zinc, WIPO case No. D2016-1236).

III. The Panel is of the view that the Complainant has presented a clear prima facie showing of the Respondent's lack of rights or legitimate interests in the Disputed domain name. As a result of the Respondent's default, the Respondent has failed to rebut that showing. Moreover, the Respondent cannot be considered to be making a bona fide offering of goods and services as within the meaning of paragraph 4(c)(i) of the Policy given that the Disputed domain points to a parking page aimed at generating revenues by capitalizing on the Complainant's trademark. Finally, the Respondent did not provide the Panel with any evidence of being commonly known by the Disputed domain name as referred to in paragraph 4(c)(ii) of the Policy (See e.g. CMC Markets UK Plc v. Domains BY Proxy LLC and Mohammad Shekh Sliman, AF 101282, Nat. Arb. Forum).

IV. The Panel finds that the Respondent registered and used the Disputed domain name in bad faith. Indeed, in light of the inclusion of the term "mail" in association with the Complainant's trademark, the Panel deems very unlikely that the Respondent did not have the Complainant's trademark in mind when registering the Disputed domain name. The Respondent's offer to sell the Disputed domain name on an online platform is a further indication of bad faith (see e.g. Groupon Inc v. Whois Privacy Corp / Ryan G Foo, PPA Media Services, WIPO Case No. D2014-2139). Finally, the use of the Disputed domain name for a parking page and email servers clearly shows, in the Panel's view, that the Respondent has intentionally attempted to attract Internet users to the Disputed domain name for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and of services on the Respondent's website (see e.g. Schellenberg Wittmer Ltd v. Whois Guard / John Peter, WIPO Case No. D2016-2378).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ACTAVISMAIL.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2017-01-20

Publish the Decision