Decision for dispute CAC-UDRP-101421

Case number	CAC-UDRP-101421
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Domain names	teva4me.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc

Respondent

Name	shlomo hadad

OTHER LEGAL PROCEEDINGS

No other legal proceedings are known by the Panel.

IDENTIFICATION OF RIGHTS

The Complainant Teva Pharmaceutical Industries Ltd owns different trademarks consisting of the word TEVA. In particular the Complainant has fully proved to be the owner of the following signs:

- Israeli Trademark No. 188932 for TEVA registered on January 4, 2007, upon application made on March 27, 2006.
- Israeli Trademark No. 41075 for TEVA registered on July 5, 1977, upon application made on August 5, 1975.
- U.S. Trademark No. 1567918 for TEVA registered on November 28, 1989, upon application made on February 17, 1989.
- EUTM No. 1192830 for TEVA registered on July 18, 2000, upon application made on June 6, 1999.
- Canadian Trademark No. TMA411063 for TEVA registered on April 16, 1993, upon application made on August 22, 1990.

FACTUAL BACKGROUND

Formed in 1976, Teva Pharmaceutical Industries Ltd. (“the Complainant”), together with its subsidiaries (collectively, “Teva”), was first established in 1901 with its global headquarters in Israel. It began trading on the Tel Aviv Stock Exchange in 1951, on NASDAQ in 1987, and on the New York Stock Exchange (NYSE: TEVA) in 2012.

Teva is a global pharmaceutical company, committed to increasing access to high-quality healthcare by developing,

producing and marketing affordable generic medicines and a focused portfolio of specialty medicines. It operates in pharmaceutical markets worldwide, with a significant presence especially in the United States and Europe. Teva is the leading generic drug company in the U.S, and the leading generic pharmaceutical company in Europe. In Canada, Teva is one of the two leading generic pharmaceutical companies in terms of prescriptions and sales as of 2015, offering a broad portfolio of medicines, and the largest pharmaceutical company in Russia as of 2015. Teva is very active also in the Over the Counter (OTC) medicines business.

Shlomo Hadad ("the Respondent") is a physical person. He uses the Disputed domain name to offer OTC products for sale over the Internet in Israel.

The Disputed domain name <teva4me.com> was registered on December 25, 2016.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

THE COMPLAINANT:

The Complainant asserts that the Disputed domain name <teva4me.com> is confusingly similar to the "TEVA" famous mark since the Disputed domain name fully incorporates "TEVA" merely adding the wording "4me" and the generic top level domain identifier ".com". Actually, 4me (with the meaning of "for me") is a merely descriptive phrase that suggests or implies one can acquire products identified by the trademark included in the Disputed domain name. According to the Complainant's view the Disputed domain name is highly similar to the "TEVA" trademark since the addition of merely generic or descriptive wording to a trademark in a domain name would be insufficient in itself to avoid a finding of confusing similarity.

Furthermore, the Complainant claims that the Respondent has no right or legitimate interests in respect of the Disputed domain name since the Complainant has never licensed or authorized the Respondent to use its TEVA mark and the Respondent is not commonly known by the Disputed domain name. The Respondent uses the Disputed domain name to offer OTC products for sale over the Internet in Israel, specifically vitamins. In the Complainant's view, this activity should be considered dangerous for consumers. Actually, offering vitamins over the Internet in Israel through a Disputed domain name which includes the "TEVA" mark, which specifically covers vitamins in Israel, creates the false idea in the consumers that the vitamins are supervised by TEVA, and are therefore safe, when that may not be the case. In the Complainant's view the Respondent intents to divert Internet users seeking the Complainant's website to a website of the Respondent and for the Respondent's benefit is not a bona fide offering of good and services.

The Complainant also asserts that the Respondent can be considered to be aware of the Complainant's trademark when registering the Disputed domain name, as also follows from the disruptive way the Disputed domain name is being used to market third-party vitamins on the Internet. Actually, in the Complainant's view the circumstances of this case indicate that the Respondent did know about the Complainant and the "TEVA" mark and intended to register and use the Disputed domain in bad faith. According to the Complainant, the Respondent is attempting to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement. Furthermore, the unauthorized use of the Complainant’s trade mark in the Disputed domain name used to point to and further, by that means, to promote the sale of third-party vitamins under a domain that incorporates the "TEVA" mark covering vitamins, is "per se" bad faith use.

THE RESPONDENT

The Respondent did not reply to the Complainant's contentions. He actually filed the Response but the content of said answer is only: "I will remove the domain name in one month".

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.

The Complainant, being represented by RiskIQ, Inc in the U.S., filed its Complaint in relation to the Disputed domain name with the Czech Arbitration Court on January 19, 2017.

The CAC formally commenced proceedings on January 25, 2017 and notified the Respondent accordingly.

The Respondent submitted his Response within the time frame required, following which the Complainant requested a temporary suspension of the proceedings to attempt to reach a settlement. The Czech Arbitration Court suspended the proceedings accordingly to Par. 11(a) of its UDRP Supplemental Rules. However, the Respondent did not reply to the Complainant's approach, and therefore the Czech Arbitration Court decided to resume the proceedings.

After then, the Czech Arbitration Court appointed Guido Maffei, as the Panel in these UDRP proceedings on February 21, 2017.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(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.

1) The Panel finds that the Complainant has proven that it is the owner of rights in the trademark "TEVA" and that said mark is known as the Complainant's mark worldwide. Of high relevance is the circumstance that there is a consistent number of domain names including "TEVA" which were held by previous panels to be confusingly similar to the "TEVA" trademark of the Complainant (see Teva Pharmaceutical Industries Ltd. v Teva Pharm, CAC Case No.101326 <tevapharmscareers.com>; Teva Pharmaceutical Industries Ltd. v. Domain Protection LLC, CAC Case No 101330 <tevadrug.com>; Teva Pharmaceutical Industries Ltd. v Cameron Jackson, CAC Case No 101311 <tevapharmaceuticals.xyz>; Teva Pharmaceutical Industries Ltd. v Amy Kinjo, CAC Case No 101161 <tevapharmaceuticalslimited.com>; Teva Pharmaceutical Industries Ltd. v. zhaoke, CAC Case No. 101134 <tevaus.com>; Teva Pharmaceutical Industries Ltd. v dh, CAC Case No. 101041 <tevacares.com>; Teva Pharmaceutical Industries Ltd. v.WHOIS PRIVACY PROTECTION SERVICE, INC., CAC Case No. 100921 <us-teva.com>; Teva Pharmaceutical Industries Ltd v. Apex Domain Pty Ltd, WIPO Case No. DAU2014-0001 <tevapharm.com.au>; Teva Pharmaceutical Industries Ltd. v. Protected Domain Services / Dworld c/o Basil Administrator, WIPO Case No. D2010-0532 <myteva.com>).

The Panel also finds that the Disputed domain name is confusingly similar to the Complainant's trademark since adding a generic wording to a domain name, such as "4me" (with the meaning of for me), is not sufficient to escape the finding of similarity and does not change the overall impression of the designation as being connected to the trademark of the Complainant. In this case the wording "4me" does not serve any distinguishing function but rather describes the nature of the services offered on the relevant website (see Sanofi Aventis v. Health Care Marketing Company, WIPO Case No. D2007-0475 <ambienforyou.com> and Sanofi Aventis v. Home, WIPO Case No. D2005-1040 <ambien-for-you.com>).The Panel therefore finds that paragraph 4(a)(i) of the Policy has been established.

2) Paragraph 4(c) of the Policy sets out in particular but without limitation three circumstances which, if proved by the Respondent, shall be evidence of the Respondent's rights to or legitimate interests in the domain name for the purpose of paragraph 4(a)(ii), namely:

(i) before any notice of the dispute to the Respondent, the Respondent's use of, or demonstrable preparation to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods and services; or (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if Respondent has acquired no trademark or service mark rights;

or (iii) the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent registered the Disputed domain name <teva4me.com>, years after the use and registration of the "TEVA" mark by the Complainant. Moreover, the Respondent appears to have attempted to benefit commercially from the appropriation of the "TEVA" mark in the Disputed domain name. The Respondent's use of the Disputed domain name to attract Internet users to his website offering for sale the same typology of products distributed by the Complainant, cannot be considered a bona fide use of a domain name (see Sanofi-aventis, Aventis Pharmaceuticals Holdings Inc. v. Babak Azizzadeh, WIPO Case No. D2007-1727 <sculptraexpert.net> and Sanofi-aventis v. Montanya Ltd., WIPO Case No. D2006-1079 <sanofiaventissalesjewlery.com>). In addition, the Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the Disputed domain name as it is not commonly known under the Disputed domain name and as the Respondent was never authorized or licensed or otherwise permitted by the Complainant to use the Disputed domain name. On the other hand, the Respondent, in the absence of any substantial response, has not shown any fact or element to justify legitimate rights or interests in the Disputed domain name. Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed domain name. Accordingly, the Panel finds that the Complainant has satisfied also paragraph 4(a)(ii) of the Policy.

3) Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the domain name in bad faith, namely:

(i) circumstances indicating that Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the domain name;

or (ii) Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or (iii) Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor;

or (iv) by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other on-line location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product.

The Panel finds that the Respondent was aware of the Complainant's trademark when he registered the Disputed domain name. Indeed, the use of the famous mark "TEVA", which is well known worldwide in the pharmaceutical sector, for selling

OTC medical products, clearly indicates that Disputed domain name was chosen to take advantage of the Complainant's mark reputation. This finding leads to the obvious conclusion that the Disputed domain name has been registered in bad faith.

The Complainant has proved that the Respondent uses the Disputed domain name to divert Internet visitors, who presumably were attempting to visit the Complainant's website, to a different websites offering products pertaining to the same business carried out by the Complainant. This behaviour, considering the high similarity of the Disputed domain name with the "TEVA" mark demonstrates a project to disrupt and take advantage from the Complainant's business by the diversion of visitors to the Complainant's website to a website showing products pertaining to the same business sector. The opportunistic bad faith resulting from the absence of any right of the Respondent in the Trademark or the Disputed domain name, the absence of any authorization or license from the Complainant to register the Disputed domain name demonstrates bad faith by the Respondent in adopting and using the Disputed domain name (see Express Scripts, Inc. v Bella Gia, WIPO Case no. D2006-0310 <express-scripts.com>). Therefore, the Panel finds that the Complainant has satisfied also paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TEVA4ME.COM**: Transferred

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2017-02-24

Publish the Decision