Decision for dispute CAC-UDRP-101424

Case number	CAC-UDRP-101424
Time of filing	2017-02-27 13:37:37
Domain names	ojovy.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc

Respondent

Organization	Trnames Premium Name Services, Domain Admin - This Domain is For Sale on GoDaddy.com

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending and/or decided legal proceedings between the parties to this dispute or relating to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant owns trademark registration rights in "OJOVY", as per Benelux registration 1006173 in Class 5 covering pharmaceutical preparations with a registration date of December 8, 2016.

FACTUAL BACKGROUND

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

Complainant ("Teva") states that is a leading global pharmaceutical company that is committed to increasing access to high-quality healthcare for people across the globe, at every stage of life, by developing, producing and marketing affordable generic drugs as well as innovative and specialty pharmaceuticals and active pharmaceutical ingredients.

Teva has trademark rights in OJOVY. Complaint owns Benelux registration number 1006173 for OJOVY in Class 5 covering pharmaceutical preparations as more fully set forth in the Registration Certificate in Annex 4. Panels have consistently held that the timing or location of the trademark registration in relation to the creation of the disputed domain name is irrelevant under paragraph 4(a)(i) of the Policy because the UDRP makes no specific reference to the date on which the trademark

owner acquired the rights or where those rights exist. E.g., WIPO Case No.D2009-0239 (<rb.net>) (internal citations omitted); see also the WIPO Overview 2.0, the first section 1.1 and references cited for the consensus view.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

FIRST ELEMENT OF THE POLICY - THE DISPUTED DOMAIN NAME IS IDENTICAL TO A MARK IN WHICH TEVA HAS ESTABLISHED RIGHT.

The disputed domain name <ojovy.com> is identical to the corresponding mark in which Teva has established rights.

SECOND ELEMENT OF THE POLICY - RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME.

Teva did not authorize, contract, license or otherwise permit Respondent to register or use the disputed domain name. Respondent is not a Teva vendor, supplier, or distributor of any of its pharmaceutical preparations, and Respondent has no trademark rights in OJOVY. Respondent is also not commonly known by this mark, or by the <ojovy.com> disputed domain name as evidenced by Whois record. Respondent has no legitimate interest in it, and there is no evidence of Respondent's use of the disputed domain name in connection with a bona fide offering of goods or services, nor any evidence of legitimate non-commercial or fair use without intent for commercial gain.

Respondent is using the <ojovy.com> disputed domain name to offer it for sale for $950 as a premium domain name through GoDaddy auctions. Respondent has identified its name in the Whois record specifically as "Domain Admin - This Domain is For Sale on GoDaddy.com," and when you go to the site, there is an advertisement for how to buy the domain name for $950 through GoDaddy Auctions.

The disputed domain is not a common dictionary term with any significance in English, the language in which the domain name resolves and of the registration agreement. Even if it were, normally, in order to find rights or legitimate interests in a domain name based on the generic or dictionary meaning of a word or phrase contained therein, the domain name would need to be genuinely used or at least demonstrably intended for such use in connection with the relied-upon meaning (and not, for example, to trade off third-party rights in such word or phrase). WIPO Overview 2.0 Par. 2.2, Consensus View.

Registering the domain name to sell it to Teva or a competitor (see discussion of bad faith element of the Policy) hardly constitutes a bona fide or a legitimate noncommercial or fair use under the Policy par. 4(c)(iii).

THIRD ELEMENT OF THE POLICY - RESPONDENT REGISTERED AND IS USING THE DISPUTED DOMAIN NAME IN BAD-FAITH.

Teva filed a U.S. trademark application for OJOVY on October 18, 2016. Annex 6. Literally, one day later, Respondent created the disputed domain name. Annex 3. This could hardly be a coincidence when the mark has no common dictionary meaning. The bad-faith registration and use of the disputed domain name is exemplified by the timing of its creation in relation to the filing.

This clearly shows the intent is to take commercial advantage from the trademark significance of the disputed domain name, primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to Teva or to a competitor for valuable consideration in excess of out-of-pocket costs directly related to the disputed domain name, or to prevent Teva from reflecting its marks in corresponding domain name. It is inconceivable that Respondent did not have Teva's mark in mind when registering it, and the action suggests opportunistic bad faith especially because it was put up for sale as a premium domain for more than the out-of-pocket cost right after purchasing it.

Finally, it is unlikely that Respondent's name incorporates the unusual distinctive component "Trnames" and has no connection with the Respondent in Kleinwort Benson Group Limited and Société Générale v. Cenk Erdogan, Trnames Domain Name Services, WIPO Case No. D2016-2377. In that case, the Respondent registered and listed a domain name for sale for $2,850 on the same day the complainant applied for registration of its mark, and the Panel noted that Respondent has a pattern of registering domain names on the same day trademark applications were filed with the European Union Intellectual Property Office and then offering such domain names for sale at a price far exceeding the Respondent's out-of-pocket costs directly related to their registration. See, Unipol Gruppo Finanziario S.p.A. v. Cenk Erdogan, Trnames Domain Name Services, WIPO Case No. D2016-1127; and Covestro Deutschland AG v. Cenk Erdogan, This domain name is for sale, WIPO Case No. D2016-1886. Given the striking similarity of conduct with the Respondent in Kleinwort Benson Group Limited and Société Générale, and that the Respondent's name is substantially identical, Complainant has established by a preponderance of the evidence that Respondent is the same entity as in that case, and therefore, that the disputed domain name was registered in bad-faith here for the additional reason that Respondent has a pattern and practice of seeking to extract a commercial advantage from trademarks for its own personal gain by racing to register domain names that correspond to trademark filings. See also Unipol Gruppo Finanziario S.p.A. v. Cenk Erdogan, Trnames Domain Name Services, WIPO Case No. D2016-1127.

In summary, Teva has shown that the disputed domain name is identical to its trademark, in which it has established rights, that Respondent has no rights or legitimate interests in respect of the disputed domain name, and that it was registered and is being used in bad faith under the Policy.

RESPONDENT: No administratively compliant Response has been filed.

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 have been met and there is no reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

In accordance with paragraph 4(a) of the Policy, for this Complaint to succeed in relation to <ojovy.com>, the Disputed Domain Name, the Complainant must prove each of the following:

(i) The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
(ii) The Respondent has no rights or legitimate interests in respect of the Domain Name; and
(iii) The Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark, in which the Complainant has established rights through Benelux trademark registration number 1006173. The trademark and the Disputed Domain Name, when directly compared, are identical, as the Disputed Domain Name incorporates the Complainant's trademark in its entirety (see Consorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano, WIPO Case No. D2003-0661).

Accordingly, the Panel finds the Complainant has satisfied the requirements set forth under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

It has been consistently held that for a Complainant to succeed under this element, the Complainant must show a prima facie case that the Respondent does not hold rights or legitimate interests in the Disputed Domain Name (see Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110). Once a prima facie case is shown, the burden of proof shifts to the Respondent, and it is up to the Respondent to come forward with appropriate allegations or evidence demonstrating its rights or legitimate interests in the Disputed Domain Name.

In this case, the uncontested facts indicate that (a) the Complainant has not licensed or otherwise permitted the Respondent to use the trademark "OJOVY" or to apply for or use any domain name incorporating this trademark, and (b) the mark "OJOVY" is not one that the Respondent would conceivably and legitimately select to be used in the context of provision of goods or services via a website, unless the Respondent was aiming to create an impression of an association with the Complainant (see Kabushiki Kaisha Toshiba v Shan Computers, WIPO Case No. D2000-0325).

Accordingly, the Panel finds the Complainant has satisfied the requirements set forth under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy enumerates an indicative list of circumstances that shall be considered evidence of registration and use of a domain name in bad faith (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

The Panel finds that the Respondent more likely than not was aware of the Complainant and had the Complainant's marks in mind when registering the Disputed Domain Name. Evidence of this can be found in the creation of the Disputed Domain Name, which took place a day after the U.S. trademark application for "OJOVY"— a practice that seems to be a pattern of conduct with this Respondent (see Unipol Gruppo Finanziario S.p.A. v. Cenk Erdogan, Trnames Domain Name Services WIPO Case No. D2016-1127 and Covestro Deutschland AG v. Cenk Erdogan, This domain name is for sale WIPO Case No. D2016-188). All in all, the record shows that the Respondent acquired the Disputed Domain Name primarily for the purpose of selling it to the Complainant or to a competitor of that Complainant, for valuable consideration in excess of the out-of-pocket costs.

Accordingly, the Panel finds that the Complainant has satisfied the requirements set forth under paragraph 4(a)(iii) of the Policy.

D. Decision

For the aforementioned reasons, in accordance with Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders that the domain name <ojovy.com> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **OJOVY.COM**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2017-03-29

Publish the Decision