Decision for dispute CAC-UDRP-101414

Case number	CAC-UDRP-101414
Time of filing	2017-02-28 16:13:10
Domain names	tevapharma.xyz

Case administrator

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

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc

Respondent

Name	bodson bodson

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

According to the evidence submitted by Complainant, Complainant is the owner of multiple trademarks including the European Union trademark TEVA, filing number 001192830, registration date 18 July 2000.

FACTUAL BACKGROUND

FACTS ASSERTED BY COMPLAINANT AND NOT CONTESTED BY RESPONDENT:

According to the information provided Complainant 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 in the United States, Europe and other markets.

The disputed domain name <tevapharma.xyz> was registered on 28 June 2016. The website to which the disputed domain name resolves mentions that the disputed domain name is for sale through Sedo for a minimum amount of USD 90.

The trademark registrations of Complainant has been issued prior to the registration of the disputed domain name.

According to Complainant the disputed domain name is confusing similar to Complainant's trademark as it contains the trademark TEVA in its entirety.

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name. Complainant has never licensed or otherwise authorized Respondent to use its TEVA mark in any fashion. Respondent is not commonly known by the disputed domain name. Complainant submits that Respondent advertises through Sedo.com that the disputed domain name is for sale with a minimum bid of USD 90, certainly in excess of the registration costs for the disputed domain name. Complainant asserts that this does not constitute a legitimate noncommercial or other fair use of the disputed domain name.

According to Complainant the disputed domain name is registered and used in bad faith. The disputed domain name was registered with the intent of profiting from the trademark significance of the TEVA mark by attempting to sell the disputed domain name to the highest bidder in excess of the registration costs. Respondent is attempting to attract for commercial gain, Internet users to Respondent's web site, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site, and the links on the website. According to Complainant the minimum USD 90 bid that Respondent is accepting to sell the domain name is clear evidence the domain name was registered and is being used in bad-faith, with intent to profit from the trademark significance by selling it in excess of the out-of-pocket registration costs. Given the distinctiveness of Complainant's trademark, it is reasonable to infer that Respondent has registered the disputed domain name with full knowledge of Complainant's trademark.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

Paragraph 15(a) of the Rules for Uniform Domain Name Resolution Policy (“the Rules”) instructs the Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Uniform Domain Name Resolution Policy (“the Policy”), these Rules and any rules and principles of law that it deems applicable”.
Paragraph 4(a) of the Policy requires that the complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:
(i) the disputed 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 disputed domain name; and
(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

In the opinion of the Panel the disputed domain name is confusingly similar to Complainant's trademarks (Policy, Par. 4 (a) (i)). Many UDRP decisions have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark or the principal part thereof in its entirety. The European Union trademark of Complainant predates by many years the registration date of the disputed domain name. The top-level domain "xyz" and the descriptive and generic addition "pharma" may be disregarded.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in the disputed domain name. Based on the evidence provided by Complainant, the disputed domain name resolves to a parking website on which it is stated "The domain name (without content) is available for sale by its owner through Sedo's Domain Marketplace". Such use cannot be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name. Respondent is also not commonly known by the disputed domain name nor has he acquired any trademark rights. Complainant has not licensed or otherwise permitted Respondent to use its trademarks or to register the disputed domain name incorporating its marks. Respondent is not commonly known by the disputed domain name. Complainant has no relationship with Respondent.
Respondent did not submit any response. Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name (Policy, Par. 4 (a)(ii)).

The Panel finds that the disputed domain name has been registered and is being used in bad faith (Policy, Par. 4(a)(iii)). The trademarks of Complainant have been existing for a long time and are well-known. Respondent knew or should have known that the disputed domain name included Complainant's trademarks. The Panel notes that there is currently no active website at the disputed domain name. However, such passive holding of the website does not prevent the Panel from finding registration and use in bad faith. The Panel also notes that Respondent's undeveloped use of the website at the disputed domain name which incorporates Complainant's trademark in its entirety indicates that Respondent possibly registered the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location.
In addition, bad faith registration and use is further indicated by the fact that Respondent offered the disputed domain name for sale which indicates that Respondent registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TEVAPHARMA.XYZ**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2017-03-31

Publish the Decision