Decision for dispute CAC-UDRP-101431

Case number	CAC-UDRP-101431
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Domain names	ajovy.com, cenmira.com, copaxoneclick.com, pernuvi.com, remfaso.com

Case administrator

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

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc

Respondent

Organization	Fing Wa a/k/a xang ming a/k/a Zhao Zing a/k/a Zhangh Yuu

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings related to the disputed domain names.

IDENTIFICATION OF RIGHTS

Complainant is the owner of certain trademark registrations and pending trademark applications in several jurisdictions as follows:

AJOVY: USA Trademark Application Ser, No. 87237174 filed Nov. 15, 2016
AJOVY: Benelux Trademark Reg. No. 1006242, reg. date Dec. 9 ,2016
CENMIRA: USA Trademark Application Ser, No. 87237166 filed Nov. 15, 2016
CENMIRA: Benelux Trademark Reg. No. 1006232, reg. date Dec. 9 ,2016
COPAXONE: USA Trademark Reg. No. 1816603, reg. date Jan. 18, 1994
COPAXONE: Community Trademark Reg. No. 002183986, reg. date Jun. 17, 2002
COPAXONE CLICK: USA Trademark Application Ser, No. 87244791 filed Nov. 22, 2016
PERNUVI: USA Trademark Application Ser, No. 87207066 filed Oct. 18, 2016
PERNUVI: Benelux Trademark Reg. No. 1006174, reg. date Dec. 8 ,2016
REMFASO: USA Trademark Application Ser, No. 87207068 filed Oct. 18, 2016
REMFASO: Benelux Trademark Reg. No. 1006175, reg. date Dec. 8 ,2016

FACTUAL BACKGROUND

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

PRELIMINARY MATTER: CAPTION OF THE PROCEEDING

Complainant hereby requests to identify Respondent in the proceeding as "Fing Wa a/k/a xang ming a/k/a Zhao Zing a/k/a Zhangh Yuu." For the reasons stated below, this request is granted.

PRELIMINARY MATTER: CONSOLIDATION OF MULTIPLE RESPONDENTS

Complainant refers to its Non-Standard Communication uploaded to the online platform 017-03-03 11:56:07. Acting as the gatekeeper, CAC subsequently allowed Complainant to file an Amended Complaint. The Amended Complaint was received referencing the multiple contact information below, providing Respondent a full and fair opportunity to respond, including by submitting substantive arguments in response to the request for consolidation.

Complainant has noted that, at the time the original Complaint was filed, the Whois records for the disputed domains all identified the same Registrant and contact information. However, one day after formal service of the original Complaint by the CAC upon that listed person or entity, the Whois records for the disputed domains were changed to identify a variety of new and different Registrants and contact information (it does not appear that Complainant has submitted an annex showing screenshots of the new Whois records but this Panel is satisfied that such records have changed based upon its independent review of the Whois database). Further, all of the domains remain with the same Registrar and all resolve to Registrar parking pages with a similar layout. As such, the Complainant has asserted, in essence, that the Respondent has engaged in cyberflight by changing the ownership of the disputed domains in an attempt to frustrate this UDRP process. It has, therefore, requested that all of the newly-identified domain name Registrants be consolidated as Respondents in this single case.

This Panel agrees with Complainant’s assertion and, for the reasons stated above, grants the request to consolidate all of the Registrants as Respondents in this case. As such, all of the named Respondents will hereafter be referred to simply as “Respondent”.

PRELIMINARY: IDENTITY OF RESPONDENT CONTACT DETAILS

The online platform was not designed to populate multiple contacts. Complainant filed the online form with the identity of the first disputed domain name as disclosed in the registrar verification. Complainant has requested to amend the Complaint to identify the following additional contact information for Respondent in accordance with the registrar verification.

1. Identity of Respondent as time Complaint was submitted to the Provider

Fing Wa
9-16 Hungina St
Hong Kong
Hong Kong
91 91 1907
CN
+86.1980178271
XingyunBaa@hotmail.com

2. Domain Name: CENMIRA.COM (and AJOVY.COM identified above in the online form)

xang ming
Zingua Mian
Zeng

Chongqing
9071
CN
+86.8198910109
xangming@outlook.com

3. Domain Names: REMFASO.COM, PERNUVI.COM

Zhao Zing
Xungio Zhango
Yaymanin
Heilongjiang
1783
CN
+86.6469816471
zhaozing@outlook.com

4. Domain Name: COPAXONECLICK.COM

Zing Lu
Zhangh Yuu
13
Zhaingai
Hebei
0978
CN
+86.8271889821
zingluu@outlook.com

BACKGROUND

The following facts have been asserted by Complainant and not contested by Respondent:

Complainant states that it is a leading global pharmaceutical company that produces drugs intended for the treatment of patients with such conditions as relapsing forms of multiple sclerosis, migraines, neurological diseases, respiratory diseases, cancer, and pain.

On November 22, 2016, Complainant filed a new trademark application in the United States for the phrase COPAXONE CLICK. Three days later on November 25, 2016, Respondent registered the domain name copaxoneclick.com.

From October 18, 2016 through November 22, 2016, Complainant filed trademark applications in the United States for the marks AJOVY, CENMIRA, PERNUVI, and REMFASO. In each instance, the domain names ajovy.com, cenmira.com, pernuvi.com, and remfaso.com, were created by Respondent within three days after each of these trademark applications were filed.

All of the disputed domain names resolve to a Registrar parking page with pay-per-click links to a variety of third-party website offering a variety of different products and services.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant ("Teva") 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.

1. <copaxoneclick.com>

Teva's Copaxone is indicated for treatment of patients with relapsing forms of multiple sclerosis. More information is available at http://www.copaxone.com. As of at least its latest annual report, Teva's Copaxone remained the leading multiple sclerosis therapy in the United States and worldwide. Daily COPAXONE has been approved in more than 50 countries worldwide, including the U.S.and all European Countries. Teva owns a family of Copaxone registrations, including a stand-alone registration for COPAXONE in the United States, U.S. Reg. No. 1,816,603 (the "'603 Registration'"), issued in 1994 with priority since 1993, in Class 5. European trademark rights in COPAXONE standing-alone include EUTM 002183986 in Class 5, issues in 2002. Id. Teva also has a family of registered COPAXONE marks combined with other terms, such as COPAXONE WEBTRACKER, COPAXONE iTRACKER, and ORAL COPAXONE, evidenced in the WIPO Global Brand Database.

On November 22, 2016, Teva filed a new application for COPAXONE CLICK in Class 5 before the United States Patent and Trademark Office. Three days later on November 25, Respondent registered <copaxoneclick.com> with GoDaddy.

The domain name <copaxoneclick.com> incorporates the entirety of Teva's COPAXONE trademark. Adding a dictionary word such as 'Click' to a fanciful mark such as COPAXONE does not negate confusing similarity between the disputed domain name and the COPAXONE trademark in which Teva has enforceable rights. Therefore, the disputed domain name <copaxoneclick.com> is confusingly similar to a trademark in which Teva has established rights.

Teva did not authorize, contract, license or otherwise permit Respondent to register or use the COPAXONE mark. Respondent is not a vendor, supplier, or distributor of Teva's COPAXONE, has no trademark rights in COPAXONE, and is not commonly known as COPAXONE, or by the domain name <CopaxoneClick.com>. Respondent has no legitimate interest in the disputed domain name <copaxoneclick.com>.

Furthermore, the disputed domain name <copaxoneclick.com> contains the entirety of Teva's COPAXONE mark, which does not have a dictionary meaning. The implication arising in the mind of the Internet user is that Respondent is either, or in some associated with, Teva. The disputed domain resolves to a "website coming soon page," which is akin to passive holding. E.g., WIPO Case No. D2016-2517. This constitutes bad-faith registration and use. Furthermore, bad-faith may be inferred from the timing of when the domain name was registered in relation to the newly filed application for a Copaxone mark by Teva incorporating the exact additional element CLICK that Respondent registered together with COPAXONE only three days earlier. This is hardly a coincidence and is clear evidence of Respondent's bad-faith intent in registering the domain name to profit from its trademark significance.

2. <ajovy.com>, <cenmira.com>, <pernuvi.com>, <remfaso.com>

Furthermore, Teva has trademark rights in AJOVY, CENMIRA, PERNUVI, and REMFASO. Complaint owns Benelux registration number 1006242 for AJOVY, 1006232 for CENMIRA, 1006174 for PERNUVI, and 1006175 for REMFASO, all in Class 5 covering pharmaceutical preparations as more fully set forth in the Registration Certificates provided by Complainant. Panels have consistently held that the timing or location of the trademark registrations in relation to the creation of the disputed domain names 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.

The disputed domain names <ajovy.com>, <cenmira.com>, <pernuvi.com>, and <remfaso.com> are all identical to the corresponding marks in which Teva has established rights. Much like with <copaxoneclick.com>, Teva also did not

authorize, contract, license or otherwise permit Respondent to register or use these disputed domain names. Respondent is not a Teva vendor, supplier, or distributor of any of its pharmaceutical preparations, and Respondent has no trademark rights in AJOVY, CENMIRA, PERNUVI, or REMFASO. Respondent is also not commonly known by these marks, or by the <ajovy.com>, <cenmira.com>, <pernuvi.com>, and <remfaso.com> disputed domain names. Respondent has no legitimate interest in them, and there is no evidence of Respondent's use of any of the disputed domain names 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.

At the time the Complaint was submitted to the Provider, Respondent was using the <ajovy.com>, <cenmira.com>, <pernuvi.com>, and <remfaso.com> disputed domain names to display Sponsored Listings and general commercial advertisements, for which as the registrant that controls the domain names, Respondent is responsible. Some of the commercial listings included specifically prescription medications in Class 5 that are by definition as pharmaceuticals, highly related to the pharmaceutical preparations in Teva's registrations, such as an ad for SUBOXONE® Sublingual Film www.suboxone.com (buprenorphine and naloxone). This type of competitive use cannot possibly be bona fide or a legitimate noncommercial or fair use under the Policy par. 4(c)(iii). The ad-infested parking pages in use on these disputed domain names took unfair advantage of the marks' goodwill for purposes of deriving PPC revenue, which also negates any argument that the disputed domain names were being passively held for a legitimate use in the future. Use of these disputed domain names constitutes unfair use, resulted in misleading diversion, which does not establish rights or a legitimate interest.

The fact that after the Complaint was submitted to the Provider, Respondent disconnected the disputed domain names from live content is irrelevant, and does not establish rights or a legitimate interest in the disputed domain names. Moreover, all of the disputed domain names are using the same mail server. There is no legitimate interest in Respondent sending emails likely to deceive people into thinking they come from the trademark owner.

The bad-faith registration and use of these disputed domain names is exemplified by the timing of their creation in relation to the filings by Teva with the USPTO.

AJOVY U.S. Trademark filng, Tue Nov 15 13:08:39 EST 2016, <ajovy.com>, created 2016-11-18T12:20:36Z,
CENMIRA U.S. Trademark filng, Tue Nov 15 13:07:22 EST 2016, <cenmira.com>, created 2016-11-18T12:20:02Z
PERNUVI U.S. Trademark filng, Tue Oct 18 14:32:10 EDT 2016, <pernuvi.com>, created 2016-10-21T12:47:04Z
REMFASO U.S. Trademark filng, Tue Oct 18 14:33:27 EDT 2016, <remfaso.com>, created 2016-10-21T12:47:05Z

Like with <CopaxoneClick.com>, this constitutes a bad-faith pattern and practice of registering domain names within three days after Teva filed for its trademarks, which under these facts, clearly shows the intent is to take commercial advantage from the trademark significance of the disputed domain names, primarily for the purpose of selling, renting, or otherwise transferring the disputed domain names to Teva or to a competitor for valuable consideration in excess of out-of-pocket costs directly related to the disputed domain names, or to prevent Teva from reflecting its marks in corresponding domain names. It is inconceivable that Respondent did not have Teva's marks in mind when registering these domain names, and the actions suggest opportunistic bad faith.

Finally, Respondent's bad-faith is exemplified by the false contact information used by Respondent. For instance, the postal code and street in Hong Kong used by Respondent in first registering the disputed domain names is inaccurate. <cenmira.com> and <ajovy.com> were moved to an alias using a postal code that does not exist within Chongqing, <remfaso.com> and <pernuvi.com> were also moved to an alias using a different postal code that does not exist within Heilongjiang, and finally, <copaxoneclick.com> was move to an alias adopting the name of a television personality in China using a completely fictitious address. The false contact information should be verifiable when the Czech Arbitration Court sends the Amended Complaint by mail to these addresses--they will likely be returned undeliverable.

In summary, Teva has shown that all of the disputed domain names are identical or confusingly similar to trademarks in which it has established rights, that Respondent has no rights or legitimate interests in respect of the disputed domain names, and all of them were registered and are being used in bad faith.

RESPONDENT:

Respondent submitted a very brief statement, in the Chinese language, stating, in essence, “Want to extend the case, plus want to please Cantonese written. Also want to have my own case, not with other users who mention it. Not affiliated with Godaddy with other users.”

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have 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

As a threshold matter, paragraph 4(a)(i) of the Policy requires that the Complainant demonstrate its ownership of trademark rights in the terms that are reflected in the disputed domain names and that the domain names are identical or confusingly similar to such trademarks. From the evidence provided, and not contested by the Respondent, Complainant owns certain United States and Benelux trademark registrations for the marks AJOVY, CENMIRA, COPAXONE, COPAXONE CLICK, PERNUVI, and REMFASO. Further, in the opinion of the Panel, each of the disputed domain names is identical (save for the use of the .com TLD) to one of Complainant’s cited trademarks.

Next, the Panel finds, under paragraph 4(a)(ii) of the Policy, that the Respondent lacks rights or legitimate interest in the disputed domain names. Complainant has made an unrebutted prima facie case showing that Respondent is not making a legitimate non-commercial or fair use of the disputed domain names without intent for commercial gain to misleadingly divert consumers or to tarnish the well known marks of Complainant. In fact Respondent is making a commercial use of the disputed domain names by having them resolve to pay-per-click pages which generate revenue, if not for the Respondent directly, at least for those companies whose links appear on such pages. Further, there is no evidence in the record that Respondent is commonly known by any of the disputed domain names nor that has it acquired any trademark rights relevant thereto.

Finally, the Panel finds, under paragraph 4(a)(iii) of the Policy, that each of the disputed domain names has been registered and is being used in bad faith. This is particularly true as Respondent intentionally attempts to attract, for commercial gain, Internet users to its pay-per-click websites by creating a likelihood of confusion with the respective trademarks of the Complainant as to the source, sponsorship, affiliation, or endorsement of Respondent’s websites or of the third-party products and services listed on such websites.

It should be noted that par. 4(a)(iii) requires proof that a disputed domain name be both registered and used in bad faith. Typically, where a complainant cannot demonstrate trademark rights that pre-date the creation of a disputed domain name it is not possible to show bad faith registration. However, past UDRP Panels have noted that, in certain situations, when the respondent is clearly aware of the complainant, and it is clear that the aim of the registration was to take advantage of the confusion between the domain name and any potential complainant rights, bad faith can be found. See, WIPO Overview 2.0,

Par. 3.1. With the exception of COPAXONE and COPAXONE CLICK, Complainant's Benelux trademark registrations were issued after the dates on which the disputed domains were created by Respondent and Complainant's United States trademark applications were filed on an intent-to-use basis thus providing no present rights. Nevertheless, the fact that each of the disputed domain names were registered by Respondent three days after Complainant's respective United States trademark applications were filed leads to the conclusion that the Respondent monitors such trademark applications and quickly registers identical domain names corresponding to such applied-for trademarks. In this Panel's opinion, such activity fits squarely within the scope of WIPO Overview 2.0, Par. 3.1 and leads to the conclusion that Respondent was aware of Complainant's trademark applications and that the disputed domain names were registered in anticipation of such applications maturing into registrations and viable trademark rights. See, e.g. Kylie Jenner, Kylie Jenner, Inc. and Whalerock Celebrity Subscription LLC v. Thevan Thirumalla, TVM Names and Kendall Jenner, Kendall Jenner, Inc. and Whalerock Celebrity Subscription LLC v. Jorly James, Cooknames, Case Nos. D2015-1189 and D2015-1190 consolidated, (WIPO, August 21, 2015).

It is also noted that such serial registration of identical domain names soon after the filing of Complainant's trademark applications constitutes a pattern of conduct to prevent the Complainant from reflecting its marks in corresponding domain names.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of UDRP par. 4(a).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AJOVY.COM**: Transferred
2. **CENMIRA.COM**: Transferred
3. **COPAXONECLICK.COM**: Transferred
4. **PERNUVI.COM**: Transferred
5. **REMFASO.COM**: Transferred

PANELLISTS

Name	**Steven M. Levy, Esq.**

DATE OF PANEL DECISION 2017-04-11

Publish the Decision