Decision for dispute CAC-UDRP-101422

Case number	CAC-UDRP-101422
Time of filing	2017-03-10 09:41:37
Domain names	teva.xyz

Case administrator

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

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc

Respondent

Organization	Dong Guan Shi Qi Pin Wang Luo Ji Shu You Xian Gong Si

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the holder of trademark rights for the word mark TEVA, registered in numerous jurisdictions including China (Reg. No. 644291 since June 7, 1993, in Class 5), the United States (US. Reg. No. 1,567,918, filed Feb. 17, 1989, issued Nov. 28, 1989 in Class 5), the EU (EUIPO Reg. No 001192830 since July 18, 2000 in Class 5), and Canada (Trademark Reg. No. TMA411063 since April 16, 1993 in Class 5).

FACTUAL BACKGROUND

Formed in 1976, through its predecessors in interest, Teva Pharmaceutical Industries Ltd., 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, which develops, produces and markets 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 Complainant has been continuously the registered proprietor of the trademark TEVA in numerous countries.

The disputed domain name <teva.xyz> has been registered on February 26, 2017. The disputed domain name does not resolve to an active website at the time of the decision.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

THE COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been commonly known by the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith.

RESPONDENT:

The Respondent did not reply to the Complainant’s contentions.

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 Policy were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

2. The Respondent has no rights or legitimate interests in respect of the Disputed domain name; and

3. The Disputed domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

Confusing similarity of the Disputed domain name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights.

As stated above, the Complainant is the holder of the registered TEVA trademark.

The Disputed domain name < teva.xyz> reproduces the Complainant's trademark TEVA in its entirety, merely adding the suffix ".xyz". It is well established that a generic top level suffix may be disregarded when considering whether the disputed domain name is identical or confusingly similar to the trade mark in which the Complainant has rights. When disregarding the ".xyz" suffix, the Disputed domain name is identical to the Complainant's trademark.

Accordingly, the Complainant has made out the first of the three elements that it must establish.

No legitimate rights

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed domain name.

It is established in the UDRP case law that it is sufficient for the Complainant to make a prima facie showing that Respondent has no right or legitimate interest in the Disputed domain name in order to shift the burden of proof to the Respondent. (See: Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094 (championinnovation.com); Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455 (croatiaairlines.com); Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110 (belupo.com).)

The Panel notes that the Respondent has not been commonly known by the Disputed domain name and that the Respondent has not acquired trademark or service mark rights. Respondent's use and registration of the Disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the Disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the Disputed domain name, under paragraph 4(a)(ii) of the Policy.

Bad faith

The Complainant must prove on the balance of probabilities that the Disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006 1052).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith registration and use, namely:

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

(ii) the respondent has registered the disputed 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 the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

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

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (See Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, supra; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, supra, where POKÉMON was held to be a well-known mark of which the use by someone without any connection or legal relationship with the complainant suggested opportunistic bad faith). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the TEVA trademark at the moment it registered the Disputed domain name, since the Complainant's trademark is a widely known trademark.

The Respondent is not using the Disputed domain name. According to the Panel, the passive holding of the Disputed domain name may amount to bad faith when it is difficult to imagine any plausible future active use of the Disputed domain name by the Respondent that would be legitimate and not infringing the Complainant's well-known mark or unfair competition and consumer protection legislation (See Inter-IKEA v Polanski, WIPO Case No. D2000 1614; Inter-IKEA Systems B.V. v. Hoon Huh, WIPO Case No. D2000 0438; Telstra Corporation Limited v. Nuclear Marshmallows, supra). The fact that a complainant's trademark has a strong reputation and is widely used and the absence of evidence whatsoever of any actual or contemplated good faith use are further circumstances that may evidence bad faith registration and use in the event of passive use of domain names (Telstra Corporation Limited v. Nuclear Marshmallows, supra).

In the present case, the Panel is of the opinion that the Complainant's TEVA trademark is widely known, which makes it difficult to conceive any plausible legitimate future use of the Disputed domain name by the Respondent.

The Panel also notes that the Respondent did not respond to the Complainant's cease and desist letters. Therefore, the Panel considers that the inference of bad faith is strengthened.

Considering the above, the Panel finds that the Complainant has made out the three elements that it must establish under the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TEVA.XYZ**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2017-04-19

Publish the Decision