Decision for dispute CAC-UDRP-101836

Case number	CAC-UDRP-101836
Time of filing	2018-01-11 09:02:07
Domain names	tevalpharm.com

Case administrator

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

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc c/o Jonathan Matkowsky

Respondent

Organization	aaa enterprise

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

According to the evidence provided, the Complainant owns a portfolio of trademarks including the wording “TEVA” and "TEVAPHARM" in several countries, e.g. as follows:

In China in word characters since 1993, in Class 5 (Reg. No. 644291).
In the United States, Complainant's mark TEVA has been registered since 1989 in Class 5 (US. Reg. No. 1,567,918) .
In Europe, the mark TEVA has been registered in Class 5 since 2000 (EUIPO Reg. No 001192830).
In Canada, TEVA has been registered in Class 5 since 1993 (Trademark Reg No. TMA411063).
In Israel, TEVA , in Class 5 since 1975 (No. 41075).
In Danemark the mark TEVAPHARM in Class 5 since 2011 (VR 2011 02130).

Furthermore, the Complainant owns domain names consisting in the wording “TEVAPHARM”, such as <tevapharm.com>.

FACTUAL BACKGROUND

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

The Complainant 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. Complainant is the leading generic drug company in the U.S., the leading generic pharmaceutical company in Europe, and in Canada in terms of prescriptions and sales. Revenues of Complainant in 2016 were $21.9 billion.

The Complainant is the owner of several domain names and trademarks containing the words ""TEVA" and "TEVAPHARM".

The Disputed domain name has been registered on December 27, 2017, and resolves to a parked page displaying commercial ads.

The Complainant states that the Disputed domain name is confusingly similar to the TEVA and TEVAPHARM trademarks in which Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy. It incorporates the trademark “TEVA” followed by the letter "l" and the term “pharm,” which is applicable as a descriptive term to the field in which the Complainant plays a prominent role, i.e. the pharmaceutical sector, and which is therefore likely to increase the possibility of confusion amongst consumers. In addition, the Complainant is also the owner of a further registered trademark “TEVAPHARM” and the Disputed domain name incorporates the entirety, adding only the letter "l" in between "Teva" and "Pharm," which looks like a vertical line separating the two words, or at best, is a typographical error, which does not negate confusing similarity.

The Complainant states furthermore, that Respondent has no rights or legitimate interests in respect of the Disputed domain name, because Respondent does not use it in connection with any legitimate use, but for a parking page. Respondent furthermore set up a mail server on the Disputed domain name, which is - in the view of Complainant - no legitimate interest.

Finally, the Disputed domain name was - in the view of the Complainant - registered and is being used in bad faith, because it is inconceivable that Respondent was unaware of Complainant's rights in either/both TEVA and TEVAPHARM when the domain was registered and because of the use of automatically generated pay-per-click links on the website and the setup of a mail server on the Disputed domain name.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

At the time of the commencement of this administrative proceeding, the publically available WhoIs details for the Disputed domain name recorded WhoisGuard, Inc. as respondent. In response to the CAC’s Registrar Verification Request, the Registrar identified the underlying respondent as “aaa enterprise". Complainant therefore amended the Complaint with this Respondent.

The Panel is, after the Complaint was amended, 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

A. Identical or Confusingly Similar

The Complainant has rights in the mark by virtue of its registered trademark TEVA and TEVAPHARM.

The Disputed domain name incorporates the whole of the Complainant's TEVA and also TEVAPHARM trademark, and adds the letter l" and for "TEVA" the generic word "pharm" as a suffix and the gTLD suffix ".com". Whilst the addition of the letter "l" and the term "pharm" is enough to preclude the Disputed domain name from being identical to the Complainant's registered trademark "TEVA" and "TEVAPHARM", the term "PHARM" is also the element that ensures that the Disputed domain name is confusingly similar to the "TEVA" mark and even more with the "TEVAPHARM" mark, and the Panel accepts the Complainant's submissions in so finding.

The Panel agrees with the Complainant that the addition of the letter "l" and the generic term "PHARM" without space or hyphen at the end of the Disputed domain name and the gTLD ".com" is not sufficient to escape the finding that the Disputed domain name is confusingly similar to the Complainant's trademark and does not change the overall impression of the designation as being connected to the trademark "TEVA" and TEVAPHARM", as the TEVA trademark at the beginning of the Disputed domain name is the only distinctive part of the Disputed domain name. The Panel agrees with Complainant that the term "PHARM," which is applicable as a descriptive term to the field in which the Complainant plays a prominent role, i.e. the pharmaceutical sector, is likely to increase the possibility of confusion amongst consumers. Therefore the Panel finds, that the Disputed domain name is confusingly similar to the Complainant's trademark TEVA and TEVAPHARM.

B. Rights or Legitimate Interests

When a respondent remains completely silent in the face of a prima facie case that it lacks any rights or legitimate interests in respect of a domain name, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. Here the Complainant has presented an abundance of evidence to show that the Respondent has no plausible right or legitimate interest in respect of the Disputed domain name and the Panel so finds.

C. Bad Faith

The Panel believes that Respondent registered the Disputed domain name with knowledge of Complainant's rights. The Disputed domain name was registered decades after the registration of the trademarks of the Complainant and Complainant used it widely since then. Furthermore, as several Panels have concluded the mark of Complainant is well-know (e.g. TEVA Pharmaceutical Industries Ltd. v. Kevin Wall NAF Claim Number: FA1302001483227; Teva Pharmaceutical Industries Ltd. v. Zhou Xi, CAC Case No. 101411) and the combination in the Disputed domain name of the TEVA mark with the to Complainant´s business related term "PHARM" shows that Respondent could not be ignorant to the Complainant´s trademarks. Finally, the Respondent used a privacy service provider, which in this case at hand also completes the overall impression, that Respondent was well aware of Complainant´s trademarks and tries to target these trademarks. Furthermore, there are pay-per-click links on the parking website.

On these grounds, the Panel concludes that the Respondent has registered and is using the Disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TEVALPHARM.COM**: Transferred

PANELLISTS

Name	**Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION 2018-02-13

Publish the Decision