Decision for dispute CAC-UDRP-101317

Case number	CAC-UDRP-101317
Time of filing	2016-10-24 11:34:36
Domain names	buyactavis.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Actavis, Inc.

Complainant representative

Organization	Matkowsky Law PC

Respondent

Name	James Williams

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks “ACTAVIS” (for instance: US registration No. 3,214,449 of 6 March 2007, for services in classes 35 and 44; US registration No. 4,694,086 of 3 March 2015 for goods in class 5).

FACTUAL BACKGROUND

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

1. The Complainant is an indirect, wholly-owned subsidiary of Teva Pharmaceutical Industries Ltd. a pharmaceutical company and the world’s largest generic medicines producer headquartered in Israel. According to the Complainant's undisputed allegations, Teva's net revenues in 2015 amounted to $19.7 billion.

2. The disputed domain name is confusingly similar to a trademark in which Complainant has rights. In fact it incorporates the entirety of the registered ACTAVIS trademark and only adds the generic verb "buy" and the ".com" gTLD suffix. The verb "buy" is likely to reinforce the impression of a connection between the Complainant and the relevant website since it suggests a website where the user can buy the products identified by the mark, i.e. the Complainant's products, which is not

in fact the case.

3. According to the Complainant's further undisputed allegations. the Respondent is neither known by the name "BuyActavis" nor is there any indication that Respondent has any trade mark rights or previously used the term "Actavis" in any legitimate manner. Moreover, the Respondent has not been commonly known by the disputed domain name so as to have acquired rights to or legitimate interests in it. The Respondent was not authorized to use the distinctive trade mark ACTAVIS for any purpose by the Complainant. It is clear from the Whois record that Respondent used false contact information to register the domain. For instance, the phone number of record for Respondent consists of the sequential numbers "+1.234567."

In addition, Respondent also set up an email account on the disputed domain to send or receive emails from an account "____@buyactavis.com." Any email sent from or to an email address "@buyactavis.com" is likely to cause confusion as Internet users will associate such an account as originating from or being sent to the Complainant or its authorized licensees.

Furthermore, the disputed domain is currently parked with GoDaddy and displaying commercial ads for GoDaddy's business, which in and of itself does not confer rights or a legitimate interest in the disputed domain name. Accordingly, Respondent is not making a bona fide offering of goods and services or a legitimate noncommercial or fair use of the disputed domain name.

4. A clear presumption of the registration of the disputed domain name being in bad faith lies in the fact that the Respondent used fictitious and false data when registering the disputed domain name. Furthermore, Respondent registered the disputed domain name (i.e. on 10 August 2016) within less than week from a press announcement (i.e. 2 August 2016) that Teva had acquired the Actavis Generics business, so it is likely that Respondent was aware of the trademark significance of the ACTAVIS mark when he registered it. In fact, a search in the United States on Google from prior to when the domain was registered disclosed numerous articles on Actavis ranging from Wikipedia to the Wall Street Journal, from Reuters to Yahoo, from Forbes to Fortune to the Financial Times. According to Forbes Global 2000 list of the world's largest companies, Complainant was listed in 2015 as No. 615.

As other UDRP panels have held, a respondent cannot escape a finding of use in bad faith by parking a disputed domain name if the surrounding circumstances indicate that the domain name comprises another's famous trademark without plausible excuse. This reasoning applies here, where it is clear that Complainant’s trademark is well-known, received considerably coverage leading up to when Respondent registered the disputed domain name, and the Respondent used false data when registering 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 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 were met and there is no other reason why it would be

inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name “BUYACTAVIS.COM” is confusingly similar to the Complainant’s trademark and company name, since it consists of the trademark/company name ACTAVIS preceded by the generic term "buy" that is likely to increase the possibility of confusion amongst consumers.

2. In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel further holds that the Respondent has no rights or legitimate interests in respect of “BUYACTAVIS.COM”. In this context, the Panel notes that the disputed domain name redirects to a parking page with pay-per-click links. Therefore, the Panel is of the view that the disputed domain name was registered by the Respondent with the intention to obtain financial advantage from the similarity between the disputed domain name and the trademark and company name that the Complainant uses for its business. The Respondent makes profit from the pay-per-click links.

3. Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith. In fact, the Respondent has intentionally registered the disputed domain name which totally reproduces the Complainant’s trademark ACTAVIS. By the time the disputed domain name was registered, it is unlikely that Respondent did not have knowledge of the Complainant’s rights on the trademark ACTAVIS. Furthermore, the Panel notes that the Respondent used false contact information to register the disputed domain name, such as a phone number consisting of the sequential numbers "+1.234567" and takes this as further evidence of a bad faith registration. The Complainant further provided evidence that the Respondent is using the disputed domain name to lead to a parking page containing pay-per-click links that generates profit to the Respondent. In the Panel's view, the above facts confirm that the domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's 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 the Respondent's web site or location, or of a product or service on the Respondent's web site or location.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BUYACTAVIS.COM**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2016-12-07

Publish the Decision