Decision for dispute CAC-UDRP-101326

Case number	CAC-UDRP-101326
Time of filing	2016-10-27 08:31:38
Domain names	tevapharmscareers.com

Case administrator

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

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc.

Respondent

Name	Teva Pharm

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any pending or decided legal proceedings which relates to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complaint is based on the following Complainant's trademarks:

- “TEVA”, Chinese trademark registration No. 644291, registered on 7 June 1993, for goods and services in class 5;
- “TEVA”, US trademark registration No. 1,567,918, registered on 28 November 1989, for goods and services in class 5;
- “TEVA”, European Union trademark registration No. 001192830, registered on 18 July 2000, for goods and services in class 5;
- “TEVA”, Canadian trademark registration No. TMA411063, registered on 16 April 1993, for goods and services in class 5;
- “TEVAPHARM”, Danish trademark registration No. VA 2011 02444, registered on 31 August 2011, for goods and services in class 5.

The Complainant provides evidences of his ownership.

FACTUAL BACKGROUND

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

Formed in 1976, through its predecessors in interest, Teva Pharmaceutical Industries Ltd., together with its subsidiaries, 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, 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. Teva is the leading generic drug company in the U.S, and the leading generic pharmaceutical company in Europe. In Canada, Teva is one of the two leading generic pharmaceutical companies in terms of prescriptions and sales as of 2015, offering a broad portfolio of medicines, and the largest pharmaceutical company in Russia as of 2015. Teva has over 20 API production facilities all over the world as of 2015, and its revenue amounted to $19.7 billion.

Furthermore, for English speakers, Teva's main website is located at < http://tevapharm.com >.

Indeed, the TEVA mark is a famous and well-known mark recognized in the pharmaceutical industry.

On October, someone reported to Complainant that they received an email from “susanfowler@tevapharmscareers.com” with the subject line "TEVA PHARMACEUTICAL INTERVIEW”. The email asserted that Teva Pharmaceuticals is expanding its remote network office, inviting the recipient for an interview with Complainant by Google Hangout.
The Respondent employed social engineering by pretending to be a Teva employee authorized to conduct interviews with potential candidates specifically on behalf of Complainant and in the name of Complainant.

The domain name <tevapharmscareers.com> was registered on October 2, 2016. The Respondent used false information on the Whois of this domain name. The Respondent falsely indicated that he resides at 1090 Horsham Road, North Wales Pennsylvania 19454. Complainant's US headquarters is located at this address.
He also indicated that his name is “TEVA PHARM”.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

1. About confusingly similarity between trademarks and the contested domain name

The Complainant asserts that the disputed domain name is confusingly similar to the TEVAPHARM mark and also to the TEVA mark in which Complainant has established rights.

The Complainant explains that in appending the term "pharmscareers" to the TEVA mark it suggests careers in the pharmaceutical field.

The complainant gives the example of WIPO Case No. D2015-0727 about the domain name <regeneronpharmcareer.com>. In this case, the Panels explains that “pharmcareer” suggests careers in the pharmaceutical field, and that the combination with the REGENERON mark suggests that the web site was created for the purpose of recruiting prospective employees in the pharmaceutical field for jobs with the complainant.

The Complainant asserts that the expression “pharm” is similar to the generic abbreviation "pharma" standing for “pharmaceutical” and gives the idea of a website belonging to the Complainant, which is a pharmaceutical company and that adding the letter “s” to the word “pharm” and the generic word “career” are too minor variations to dispel confusing similarity. A dictionary word such as “career” is not sufficient to dispel the confusing similarity of the disputed domain name

The Complainant's TEVAPHARM and/or TEVA trademarks are the only arguably dominant and distinctive elements of the

disputed domain name.

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

The Complainant claims that the Respondent has no right or legitimate interests in respect of the contested domain name.
The Complainant has never licensed or authorized the Respondent to use its TEVA or TEVAPHARM marks.
The Respondent is not commonly known by the disputed domain name.
The Respondent used false contact information on the Whois of the domain name <tevapharmscareers.com>. There is no natural person named Teva Pharm and the address is the address of the Complainant's US headquarters.

Respondent has neither used the disputed domain name in connection with a bona fide offering of goods or services nor made any legitimate noncommercial or other fair use of the disputed domain name. The only active use made of the disputed domain name is to spoof Complainant's identity to send fraudulent emails in the name of Complainant to members of the public interested in a job with Complainant.
A respondent lacks rights and legitimate interests in a domain when it uses the domain to either engage in illegal activity or operate a phishing scam.

3. The domain name have been registered and are being used in bad faith

According to the Respondent, the disputed domain name <tevapharmscareers.com > was registered and is being used by the Respondent in bad faith.

The Complainant asserts that the disputed domain name was registered with the intent of profiting by disrupting Teva's business, specifically by spoofing its identity to conduct online job scams to steal money or personal information from victims.

Phishing is a criminal mechanism employing both social engineering and technical subterfuge to steal personal identity data and financial account credentials.

The Complainant explains that the use of a domain name to execute email phishing attacks and to attract Internet users to a website creating a likelihood of confusion with the Complainant is clearly a violation of the bad faith registration and use provisions of the Policy at paragraph 4(b)(iv): "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location".

For the bad faith, the Complainant asserts that, panels have agreed that using a domain name as part of an email phishing scheme is bad faith.

By example in the case "Emdeon Business Services, LLC v. HR Emdeon Careers", FA1507001629459 (Forum Aug. 14, 2015), Panel found that the respondent had engaged in an email phishing scheme indicating bad faith under Policy 4(a)(iii), where respondent was coordinating the disputed domain name to send emails to Internet users and advising them that they had been selected for a job interview with the complainant and was persuading the users to disclose personal information in the process.

Furthermore, using a false name spoofing Complainant's name ("Teva Pharm") as a first and last name to register the disputed domain name, and using Complainant's address in the U.S. headquarters as its residential address is additional evidence of bad faith registration and use.

RIGHTS

The disputed domain name is composed of the Complainant's trademarks TEVA and TEVAPHARM.

Like the Complainant argued, the trademark TEVAPHARM is distinctive and dominant in the domain name <tevapharmscareers.com>.

The addition of the dictionary word “career” is not sufficient to remove this confusion.

On the contrary, the addition of this term suggests that the Complainant is offering jobs in its company.

Therefore, the disputed domain name <tevapharmscareers.com> is confusing similar with the Complainant’s trademark.

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

As set forth by Paragraph 4 (c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent’s rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to the Respondent of the dispute, its use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent, (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant’s trademarks TEVA and TEVAPHARM are prior to the registration date of the disputed domain name.

The Panel relies on the produced pieces of evidence to find that the trademarks TEVA and TEVAPHARM are well-known in the pharmaceutical field.
The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain name incorporating its marks.
The Respondent does not use the disputed domain name in connection with a bona fide offering of goods or services and does not make a legitimate non-commercial or other fair use of the disputed domain name
The Respondent is not commonly known by the domain name and did not ever respond to the Complaint.

Under these circumstances, the Panel finds that the Complainant has shown that the Respondent has 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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by an Administrative Panel to be evidence of the bad faith registration and use of a domain name. It provides that:

“For the purposes of Paragraph 4(a) (iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location."

The position of the Complainant on the market is well established.

The Respondent must have been perfectly aware of the rights on the prior TEVA and TEVAPHARM trademarks when registering the disputed domain name.

He has registered the domain name <tevapharmscareers.com> using a privacy service and providing to the Registrar false information about its name and address. Indeed, the registrant's name cannot be "TEVA PHARM". He did, on purpose, decide to provide the address of the Complainant's US headquarters in the Whois data of the disputed domain name.

The disputed domain name is used by the Respondent to send emails via the address mail "susanfowler@tevapharmscareers.com".

It shows that the Respondent intended to appear as being the Complainant when sending emails to third parties, what is likely to damage the Complainant's image.

Under these circumstances, the Panel finds that 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) and 4(b)(iv) 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

The disputed domain name <tevapharmscareers.com> is confusingly similar to a trademark TEVAPHARM.

The Panel relies on the produced pieces of evidence to find that the trademarks TEVA and TEVAPHARM are well-known in the pharmaceutical field.

The Respondent did not answer to the Complaint.

He is not authorized to use the disputed domain name and has not proven any legitimate use thereof.

The Respondent does not use the disputed domain name in connection with a bona fide offering of goods or services and does not make a legitimate non-commercial or other fair use of the disputed domain name. Therefore the criteria of the absence of legitimate right or interests are met.

He registered the disputed domain name using a privacy service and providing false data including the Complainant's address.

The disputed domain name is used by the Respondent to send emails, for example via the address mail

"susanfowler@tevapharmscareers.com".

It shows that the Respondent intended to appear as being the Complainant when sending emails to third parties, what is likely to damage the Complainant's image.

Under these circumstances, the Panel finds that 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(b)(iv) of the Policy

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TEVAPHARMSCAREERS.COM**: Transferred

PANELLISTS

Name	**Marie Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2016-12-05

Publish the Decision