Decision for dispute CAC-UDRP-101311

Case number	CAC-UDRP-101311
Time of filing	2016-10-24 11:26:15
Domain names	TEVAPHARMACEUTICALS.XYZ

Case administrator

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

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	Matkowsky Law PC

Respondent

Name	Cameron Jackson

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of a number of trademarks “Teva” in various countries, including an Australian trademark “Teva”, No. 567236, registered on November 13, 1991, valid in class 5. Further, the Complainant is the owner of the trade name “Teva Pharmaceuticals”.

FACTUAL BACKGROUND

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

The Complainant 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 in 2012. It is ranked among the 10 top pharmaceutical companies in the world, active in 60 countries, and with $20.3 billion in net revenues in 2014, the Complainant delivers high-quality, patient-centric healthcare solutions to millions of patients every day.

The Complainant has been continuously the registered proprietor of the trademark TEVA in numerous countries, including an Australian registration since 1991 in Class 5 (No. 567236).

Prior domain dispute resolution panels before the Czech Arbitration Court, World Intellectual Property Organization, and The Forum have consistently recognized the Complainant's rights in the „TEVA“ registered mark. E.g., Teva Pharmaceutical Industries Ltd. v.WHOIS PRIVACY PROTECTION SERVICE, INC., CAC Case No. 100921 (Czech Arb. Ct. Apr. 15, 2015) (transferring <US-teva.com> per UDRP); Teva Pharmaceutical Industries Ltd v. Apex Domain Pty Ltd, Case No. DAU2014-0001 (WIPO March 3, 2014) (transferring <tevapharm.com.au> per .auDRP); TEVA Pharmaceutical Industries Ltd. v. Kevin Wall, Claim No. FA1302001483227 (The Forum March 27, 2013) (transferring <tevarx.com> per UDRP); TEVA Pharmaceutical Industries Ltd. v. Inbal Sasson, Claim No. FA1208001457898 (The Forum Sept. 21, 2012) (transferring <tevaseiyaku.com> and others per UDRP); Teva Pharmaceutical Industries Ltd. v. Protected Domain Services / Dworld c/o Basil Administrator, Case No. D2010-0532 (WIPO May 28, 2010) (transferring <myteva.com> per UDRP).

The Respondent registered the disputed domain name on June 30, 2016.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

I. Identity or confusing similarity

In reference to paragraph 4(a)(i) of the Policy the Complainant states that the disputed domain name is confusingly similar to its trademark “Teva” and identical to its trade name “Teva Pharmaceuticals”.
The TEVA trademark is recognizable as such within the disputed domain name, with the addition in the second level domain name of only a generic term describing the essence of Complainant's business and of its trading name. There is no doubt that the incorporated trademark TEVA constitutes the dominant or principal component of the domain name. The ".xyz" top-level domain suffix in the domain name should be disregarded under the confusing similarity test as a "top-level domain" is a technical requirement of registration and an "open" TLD that carries no significance in terms of mitigating against confusion.

As stated in Solvay SA v. Cameron David Jackson, WIPO Case No. D2016-0559 specifically against the Respondent in connection with his registering <solvaypharmaceuticals.xyz> and others confusingly similar to a well-known pharmaceutical company:

"The combination of the trade mark of a well-known multinational enterprise with a word associated with that enterprise is likely to lead those seeking to do business with, or to learn about the Complainant or its business to believe that the websites under the disputed domain names are official sites of the Complainant and it is reasonable to infer that that was the Respondent’s intention when registering the disputed domain names....That is quite enough to support a finding that the disputed domain names are confusingly similar to a trade mark in which the Complainant has rights."

Therefore, the Domain is confusingly similar to the well-known TEVA registered trademark in which Complainant has rights and identical to its trade name.

II. No rights or legitimate interests of the Respondent

The Complainant states the Respondent does not have any rights or legitimate interest in the domain name.
The Respondent appears to carry on a business of registering domain names that correspond to, or contain, well known trade marks, including those of pharmaceutical companies and banking institutes in the .xyz top-level domain (e.g. CAC Case No. 101219 (<BOEHRINGERPHARMA.XYZ>); WIPO Case No. D2016-1276). The Complainant has no business connection with the Respondent, and has never authorized nor licensed the Respondent to use any of its marks. The Respondent is using the disputed domain name to host an advertisement for OnlyDomains.com, the company he contracted

with for his hosting, and has set up an email account on the disputed domain which enables him to send or receive email from the disputed domain @tevapharmaceuticals.xyz, which would likely confuse people into thinking the email originates with the Complainant. The Respondent has no legitimate interest in passively holding the domain, or in setting up an email account to send and receive emails from a <TevaPharmaceuticals.xyz> mail account on the disputed domain, as it is likely to be used only to cause confusion and potentially for phishing attacks and/or other types of fraudulent activities.

III. Domain name has been registered and is being used in bad faith

The Respondent has been found by prior Panels to be a serial-cybersquatter in relation to the ".xyz" domain space, including targeting well-known pharmaceutical companies, which is in and of itself evidence of bad faith (e.g., Banco Bradesco S/A v. Cameron David Jackson, WIPO Case No. D2016-1118; BforBank SA v. Cameron David Jackson, WIPO Case No. D2016-0643). There are also many other cases evidencing Respondent's bad-faith in relation to registering trademarks in the ".xyz" space (e.g., Dollar Bank, Federal Savings Bank v. Cameron David Jackson, WIPO Case No. D2016-1276; BHP Billiton Innovation Pty Ltd v. Cameron David Jackson, WIPO Case No. D2016-1226; BHP Billiton Innovation Pty Ltd v. Cameron David Jackson, WIPO Case No. D2016-0345). The registration of the disputed domain name prevents the Complainant from registering a domain name corresponding with its trademark and trade name that it might well have wished to register in the ".xyz" Top-Level Domain. The disputed domain name directs to a registrar parking page, which is passive holding and disruptive to Complainant's business because the domain name is confusingly similar to Teva's well-known mark. Panels have held that Respondent registered similar domains primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name. It is, therefore, reasonable to infer from Respondent's pattern and practice that Respondent registered this domain for a similar purpose of profiting from the association of the domain with Complainant' mark. It is clear from Respondent's UDRP history that the disputed domain name cannot be used by Respondent legitimately--only to profit from the association with Complainant's name and mark; it is also reasonable to infer from the existence of the mail account set up on the disputed domain that Respondent registered it for the purpose of engaging in fraudulent related activities, such as spoofing Complainant's identity in sending emails, which may compromise the public's personal or sensitive information--much worse than merely profiting from commercial ads or passive holding. For all of the foregoing reasons, Respondent registered and is using the domain name in bad faith.

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

I.
As the Respondent did not file an administratively compliant Response, pursuant to paragraph 14(b) of the Rules, the Panel may draw such inferences therefrom as it considers appropriate. The Panel may accept the contentions of the Complainant

as admitted by the Respondent.

II.
The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to the Complainant`s trademarks (within the meaning of paragraph 4(a)(i)of the Policy).

The Panel agrees with the Complainant that the disputed domain name is identical to the Complainant`s trade name "Teva Pharmaceuticals". The disputed domain name wholly incorporates this trade name. It is, further, confusingly similar to the Complainant's trademark "Teva", as "pharmaceuticals" is a generic, non distinctive term that can be disregarded in this respect, as can the top level domain ".xyz".

III.
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).

No arguments, why the Respondent could have own rights or legitimate interests in the disputed domain name are at hand, particularly because there are no facts at hand proofing such rights or interests. The term "Teva", particularly in connection with the term "pharmaceuticals", does not seem to have any other (dictionary) meaning than the name of the Complainant. The Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in the disputed domain name.

IV.
The Complainant has, to the satisfaction of the Panel, shown the Domain Name to have been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

The timing of the registration of the disputed domain name indicates the Respondent`s bad faith in registering such domain name, as, at that time, the Complainant was already known under the name "Teva Pharmaceuticals" and was owner of many trademarks "Teva" in several countries. The Panel has no reason to disbelieve the Complainant when it argues that this coincidence has its roots in the fact that the Respondent knew the Complainant and its activities at the time of registration and sought to hinder the Complainant from registering the domain name itself.

As the term "Teva" does not have a generic meaning, the Respondent may have wished to use for other reasons, it is evident that the Respondent must have known the Complainant and/or its trademarks, particularly as the Respondent added "Pharmaceuticals" to the name "Teva", which clearly indicates that the Respondent knew the Complainant and its trademark. There is no evidence that the Respondent has registered the domain name without reference to Complainant`s trademark and trade name. Furthermore, the Panel notes that even if the Respondent denies actual knowledge of the Complainant`s trademark and trade name (even though the Panel is convinced that at the time of the registration of the disputed domain name the Respondent knew the Complainant`s trademark and trade name) the Respondent should have been aware of the Complainant's rights as it was obliged to determine whether its domain name registration infringes or violates someone else's rights under paragraph 2 of the Policy. Simple Google-search would have been sufficient in this regard. If the Respondent fails to do so, it has to bear the consequences.

The Complainant further states, the concept of the domain names "being used in bad faith" is not limited to positive action, but rather incorporates inaction. At least in this case, where, according to the Complainant's undisputed contentions, "Teva" is a well-known trademark, the Panel agrees. According to paragraph 4(b)(i) it shall be seen as evidence for bad faith use, if the Respondent registered the domain name in order to prevent the owner of the trademark from reflecting such mark in a corresponding domain name (see also cases CAC No. 101251 (<SURCREDIT-AGRICOLE.COM>), CAC 101250 (<PRADAXA.XYZ>): "The adoption of a well-known trademark into a domain name by someone with no apparent connection with the name suggests opportunistic bad faith"; furthermore see cases The Gap, Inc. v. Deng Youqian, WIPO Case No. D2009-0113; SembCorp Industries Limited v. Hu Huan Xin, WIPO Case No. D2001-1092; Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., WIPO Case No. D2000-0163).

According to the Complainant`s contentions supported by evidence and in the absence of any contrary contention of the Respondent, the Panel holds the Respondent`s conduct to be the manifestation of registration and use in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TEVAPHARMACEUTICALS.XYZ**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2016-12-09

Publish the Decision