Decision for dispute CAC-UDRP-101413

Case number	CAC-UDRP-101413
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Domain names	tevapharmsales.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc

Respondent

Name	Steven Simons

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant has been continuously the registered proprietor of the trademark TEVA in numerous countries. The TEVA mark has been registered in China in word characters since June 7, 1993, in Class 5 (Reg. No. 644291). Id. In the United States, the Complainant's mark TEVA has been registered since 1989. Id. (includes print-out of status of US. Reg. No. 1,567,918 (filed Feb. 17, 1989, issued Nov. 28, 1989), in Class 5). In Europe, TEVA has been registered in Class 5 since at least 2000 (EUIPO Reg. No 001192830). Id. In Canada, TEVA has been registered in Class 5 since 1993-04-16 (Trademark Reg. No. TMA411063). Id. In Israel, TEVA has been registered in Class 5 with priority since 1975 (Reg. No. 41075). Id.

FACTUAL BACKGROUND

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

I. The Disputed domain name is confusingly similar to a trademark in which the Complainant has rights:

A. BACKGROUND

Formed in 1976, through its predecessors in interest, Teva Pharmaceutical Industries Ltd. (“Complainant”), 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, 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.

Well before the Disputed domain name was created on 2016-12-26, Complainant has been continuously the registered proprietor of the trademark TEVA in numerous countries. The TEVA mark has been registered in China in word characters since June 7, 1993, in Class 5 (Reg. No. 644291). In the United States, Complainant's mark TEVA has been registered since 1989. (includes print-out of status of US. Reg. No. 1,567,918 (filed Feb. 17, 1989, issued Nov. 28, 1989), in Class 5). In Europe, TEVA has been registered in Class 5 since at least 2000 (EUIPO Reg. No 001192830). In Canada, TEVA has been registered in Class 5 since 1993-04-16 (Trademark Reg No. TMA411063). In Israel, TEVA has been registered in Class 5 with priority since 1975 (Reg.No. 41075).

Furthermore, for English speakers, Teva's main website is located at http://tevapharm.com, and Complainant has registered trademark rights in TEVAPHARM in Class 5., at 23-24 (includes VR 2011 02130 registered with Danish Patent and Trademark Office in Class 5 and other classes as of 2011-08-3).

Prior domain dispute resolution panels before the Czech Arbitration Court, World Intellectual Property Organization, and The National Arbitration Forum (now known as 'The Forum') have consistently recognized Complainant's rights in the TEVA registered mark. E.g., Teva Pharmaceutical Industries Ltd. v. Cochav Segal Halevi, CAC Case No. 101332 (Czech Arb. Ct. Jan. 16, 2017); Teva Pharmaceutical Industries Ltd. v Teva Pharm, CAC Case No.101326 (Czech Arb. Ct. Dec. 19, 2016) (transferring <tevapharmscareers.com>); Teva Pharmaceutical Industries Ltd. v. Domain Protection LLC, CAC Case No 101330 (Czech Arb. Ct. Dec. 16, 2016) (transferring <tevadrug.com>); Teva Pharmaceutical Industries Ltd. v Cameron Jackson, CAC Case No 101311 (Czech Arb. Ct. Dec. 14, 2016) (transferring <tevapharmaceuticals.xyz>); Teva Pharmaceutical Industries Ltd. v Amy Kinjo, CAC Case No 101161 (Czech Arb. Ct. March 3, 2016) (transferring <tevapharmaceuticalslimited.com>); Teva Pharmaceutical Industries Ltd. v. zhaoke, CAC Case No. 101134 (Czech Arb. Ct. Jan. 20, 2016) (transferring <tevaus.com>); Teva Pharmaceutical Industries Ltd. v dh, CAC Case No. 101041 (Czech Arb. Ct. Jan. 11, 2016) (transferring <tevacares.com>); 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). Representative cases from before 2015 are included as Annex 6. The more recent cases can be found at http://www.udrpsearch.com/ Last year, the Israel Internet Association also recognized Teva's rights in the TEVA trademark, and the Panelist ordered <tevadrugs.co.il> and <teva4me.co.il> to be transferred to Complainant per the IL-DRP.

The TEVA mark is a famous and well-known mark recognized in the pharmaceutical industry for many years prior to the registration of the disputed domain name.

B. Confusing Similarity. ICANN Rule 3(b)(ix)(i); ICANN Policy 4(a)(i).

According to the Complainant, the Disputed domain name is both identical or confusingly similar to the TEVAPHARM mark in which Complainant has established rights, and also to the TEVA mark in which Complainant has established rights. The

expression “pharm” has been treated similar to the abbreviation "pharma" standing for “pharmaceutical” and gives the idea of a website belonging to the Complainant, which is a pharmaceutical company. E.g., Takeda Pharmaceutical Company Limited v. Martin Freymond, The Forum Claim Number: FA1510001642008 (transferring <takedapharmca.com> on the basis that "pharm" as a generic abbreviation for pharmaceutical combined with a geographically descriptive abbreviation does not dispel confusing similarity with the TAKEDA mark); Actelion Pharmaceuticals Ltd v. Fils James / Litemills, WIPO Case No. D2015-2115 (transferring <actelionpharma.com> on the basis that "pharma" is generic and does not negate confusing similarity with the ACTELION mark). The addition of the generic word "sales" gives the impression that emails from the Disputed domain name are authorized by the Complainant or that the content hosted on the Disputed domain name is sponsored, approved by, or originates with the Complainant. Therefore, not only does the term 'sales' not lessen the confusing similarity, but it increases it. Finally, the addition of the legacy gTLD ".com" suffix is irrelevant under the first element of the Policy because it has no distinguishing capacity as a technically required component of registration.

The Complainant also states that the Disputed domain name is also identical or confusingly similar to the tevapharm.com domain and website operated by the Complainant, which is also comprised of the TEVAPHARM mark in which the Complainant has also established rights.

The Complainant's TEVAPHARM and/or TEVA trademarks are the only arguably dominant and distinctive elements of the Disputed domain name. And for the foregoing reasons, the Disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

II. The Respondent has no rights or legitimate interest in the Disputed domain name:

The Complainant has never licensed or otherwise authorized the Respondent to use its TEVA or TEVAPHARM marks in any fashion. The Respondent is not commonly known by the Disputed domain name under Policy 4(c)(ii).

The 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. Respondent through GoDaddy, displays sponsored listings on the Disputed domain name, including commercial listing highly related to Complainant's business, such as "GoodRx.com" to make more informed decisions about where to buy prescription drugs and from whom.

As set forth in the GoDaddy Registration Agreement, GoDaddy's parked page was described to Complainant as "an online domain monetization system designed to generate revenue (through the use of pay per click advertising) from domain names that are not actively being used as websites." Respondent specifically acknowledged and agreed that GoDaddy may display in-house advertising and third-party advertising on the Parked Page through the use of any advertising means. GoDaddy instructed Respondent that Respondent may change GoDaddy’s Default Settings at any time during the term of your domain name registration, including by having No Content. Accordingly, Respondent is responsible for contracting with GoDaddy to monetize the parked page on the disputed domain pursuant to the Registration Agreement, notwithstanding that the Respondent did not play an active role in deciding which sponsored listings would be displayed.

Allowing GoDaddy to monetize the Disputed domain name with third-party links and general advertisements both related and unrelated to Complainant's business hardly constitutes a bona fide offering or legitimate noncommercial or other fair use of the Disputed domain name confusingly similar to Complainant's well-known trademark.

More troubling though, the Respondent said up a mail server on the Disputed domain name to send and receive emails from the Disputed domain name. This is apparent from the MX (Mail) record set up in the DNS on the Disputed domain name.

III. Registration and use in bad faith:

According to the Complainant there is no chance that Respondent registered a domain name that is confusingly similar to Complainant's well-known trademark as is evidenced by the use of descriptive terms suggestive of pharmaceutical sales. Respondent had a choice of where and how to host the Disputed domain name, and elected to allow GoDaddy to monetize

the trademark significance, which is obviously for commercial gain and impacts on the hosting packages that GoDaddy can offer its customers. Furthermore, the Respondent is responsible for the commercial advertisements under the GoDaddy Registration Agreement, and is therefore, attempting to attract for commercial gain, Internet users to Respondent's web site, by creating a likelihood of confusion with the C omplainant's mark as to the source, sponsorship, affiliation, or endorsement of the web site, and the links on the website. Given that Complainant's TEVA and TEVAPHARM marks are well-known trademarks as evidenced by the record, it is obvious that the Respondent targeted the trademarks of the Complainanant. The Disputed domain name was registered and used for the purposes described in paragraphs 4(b)(iv) of the Policy.

Furthermore, the fact that the Respondent set up a mail server on the Disputed domain name shows that the intent is likely to confuse people into believing that mail received from, or sent to, the Disputed domain name either originates with, or will be sent to the Complainant or its authorized affiliates, when that is not the case. This constitutes bad-faith registration and use of the Disputed domain name to cause confusion, mistake or deception as to the online location of the mail account 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 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 were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that the Disputed domain name <tevapharmsales.com> is confusingly similar to the Complainant’s trademarks TEVA and TEVA PHARM, the wording “sales” being only descriptive.

The Complainant contends that it did not authorize nor license the right to use its trademarks to the Respondent, who has made no use of, or demonstrable preparations to use, neither of the Disputed domain name in connection with a bona fide offering of goods or services, is not making a legitimate non-commercial or fair use of the Disputed domain names, and is not commonly known under the Disputed domain name.

The Disputed domain name is not used for any active website at the time of the decision, and the Panel does not find any conceivable good faith use that could be made by the Respondent under the Disputed domain name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the Disputed domain name <tevapharmsales.com>.

The Complainant also proved that the Respondent has set up a mail server in connection with the Disputed domain name in issue, leading the Panel to the conclusion that the Respondent’s intent is likely to confuse people into believing that mail

received from, or sent to, the Disputed domain name either originates with, or will be sent to the Complainant or its authorized affiliates, when that is not the case.

These facts, including the absence of a response and pattern of conduct on the part of the Respondent also confirm that the Disputed domain name has been registered in order to prevent the trademark holder – the Complainant - from reflecting the TEVA and TEVAPHARM trademarks in a corresponding Disputed domain name under gTLD.com.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TEVAPHARMSALES.COM**: Transferred

PANELLISTS

Name	**Alexandre Nappey**

DATE OF PANEL DECISION 2017-03-06

Publish the Decision