Decision for dispute CAC-UDRP-101411

Case number	CAC-UDRP-101411
Time of filing	2017-01-18 08:28:47
Domain names	tevapharm.xyz

Case administrator

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

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc

Respondent

Organization	Zhou Xi

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 registered owner of several trademark registrations consisting of or containing the term “TEVA”, in particular “TEVA” US. Reg. No. 1,567,918 filed on February 17, 1989 and issued on November 28, 1989 for goods in class 5 and “TEVAPHARM” No. VR 2011 02130 registered on August 31, 2011 with Danish Patent and Trademark Office amongst others for goods in class 5. Moreover, it uses the domain name tevapharm.com.

FACTUAL BACKGROUND

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

1.
The Complainant is a global pharmaceutical company, operating in pharmaceutical markets worldwide, with a significant presence in the United States, Europe and other markets. Formed in 1976, through its predecessors in interest, the Complainant, 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.

The Complainant contends that its TEVA and TEVAPHARM marks are well-known trademarks.

2.
The Disputed domain name “tevapharm.xyz” was created on November 11, 2016 and is currently registered on the name of the Respondent.

3.
The Complainant contends that the Respondent through Sedo.com displays sponsored listings on the Disputed domain name, some of which directly relate either to the Complainant or to its competitors. Furthermore, the Respondent offers the Disputed domain name for sale with a minimum bid of $90, in excess of the registration costs for the Disputed domain name. Finally, the Respondent uses false contact information as the same registrant e-mail account was used to register domain names with different names and contact addresses.

4.
The Complainant requests to proceed in English because the Disputed domain name is comprised of an English abbreviation for pharmaceutical (pharm), not Chinese characters or the equivalent transliteration, and the website hosted on the Disputed domain name is entirely in English. The main purpose of making the request is that the Complainant is not familiar with Chinese and having to conduct the proceedings in Chinese would disadvantage the Complainant as it would have to incur added expense and inconvenience in having the Complaint translated into Chinese.

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

The Panel is satisfied that all procedural requirements under the Policy were met and there is no other reason why it would be inappropriate to provide a decision.

The language of the Registration Agreement is Chinese. However, in view of the circumstances of the case, including the fact that the website hosted on the Disputed domain name is entirely in English, that the term “pharm” contained in the Respondent’s Disputed domain name is the abbreviation of the descriptive English term “pharmaceutical”, and the fact that the Respondent has been given a fair chance to object but has not done so, the Panel determines in accordance with paragraph 11(a) of the UDRP Rules that the language of the proceeding be English.

PRINCIPAL REASONS FOR THE DECISION

1.
The Panel finds that the disputed domain name <tevapharm.xyz> is confusingly similar to the Complainant’s trademarks. As

a matter of fact, it merely consists of the trademark “TEVA” followed by the English 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”.

2.
In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the Disputed domain name. In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and he is not related in any way to the Complainant’s business. Moreover, the Respondent has not demonstrated any preparations to use the Disputed domain name in connection with a bona fide offering goods or services. In this context, the Panel notes that the Disputed domain name redirects to a Sedo 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 the Complainant uses for its business. The Respondent makes profit from the pay-per-click links and takes undue advantage from the reputation of the TEVA trademark.

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 trademarks “TEVA” and “TEVAPHARM”. By the time the Disputed domain name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant’s rights on the trademarks “TEVA” and “TEVAPHARM”. 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 directing to competitors of the Complainant and that generate profit to the Respondent. In the Panel's view, these facts, including the fact that the Disputed domain name is offered for sale to the general public, also confirm that the Disputed 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. **TEVAPHARM.XYZ**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2017-03-08

Publish the Decision