Decision for dispute CAC-UDRP-101439

Case number	CAC-UDRP-101439
Time of filing	2017-02-27 14:22:25
Domain names	teva-shop.com

Case administrator

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

Complainant

Organization	Teva Pharmaceutical Industries Ltd.

Complainant representative

Organization	RiskIQ, Inc

Respondent

Organization	Vitaminez, Eran Ovadia

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the registered proprietor of the trade mark TEVA in many countries, including Israel, No. 41075, registered in international Class 5 on August 5, 1975.

FACTUAL BACKGROUND

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

According to information presented by the Complainant, 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. The Disputed domain Name was registered in the name of a privacy service on January 4, 2016. It resolves to a website offering vitamins for sale in Israel. The Complainant has not authorised the Respondent to use the TEVA mark in any way.

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

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

The Complainant has shown that it has rights in the trade mark TEVA. The Domain Name is confusingly similar to the Complainant's mark because it combines the TEVA mark with "a dictionary word largely used on the Internet in connection with online ecommerce webpages, not adding any distinctiveness and thus being confusingly similar therewith." Hayat Kimya Sanayi Anonim Şirketi v. Mohsen Akbari, WIPO Case No. D2016-2612.

As to legitimacy, the Complainant says the Respondent was not authorized by the Complainant to use the distinctive trade mark TEVA for any purpose, and has no affiliation whatsoever with it. The WHOIS information, as well as all other information in the record, gives no indication that the Respondent is commonly known by the Domain Name. The division of Enforcement and Inspection of the Ministry of Health in Israel warns the public against the purchase of dietary supplements manufactured without supervision and sold on the Internet. Therefore, the offering of vitamins by the Respondent over the Internet in Israel under the registered TEVA mark, which specifically covers vitamins in Israel, creates a danger in representing to the public (if such website is not approved by the Complainant) that the vitamins for sale are supervised by Teva and are therefore inherently safe, when that may not be the case. Such use of the Domain Name is also an illegitimate and unfair use resulting in misleading diversion under the Policy, and likely to cause confusion, mistake or deception.

The Panel finds that the TEVA mark is distinctive and widely known. The Complainant’s assertions are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the Domain Name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the Domain Name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

As to bad faith, the Panel accepts the Complainant's contentions that:

* TEVA is a famous and well-known trademark, especially in Israel where Respondent resides;
* the Respondent’s registering the TEVA mark is clearly commercially motivated;
* it is inconceivable that Respondent registered the Domain Name without having in mind the Complainant’s trademark;
* given the Complainant’s established rights in its mark and that the Domain Name is "so obviously connected" with the

Complainant, the Respondent's actions suggest "opportunistic bad faith" in violation of the Policy. Research in Motion Limited v. Dustin Picov, WIPO Case No. D2001-0492;
*Respondent intentionally sought to commercially gain by deceptive bait and switch advertising practices, and to take unfair advantage of the goodwill of the Complainants' trademark. Fred W. Gretsch Enterprises, Ltd. v. NOLDC, Inc., FA0906001270597 (Nat. Arb. Forum Aug. 5, 2009) (finding that when a respondent used the domain name with products that compete with those of the Complainant, "[t]he competitive nature of Respondent's use of [the domain name] renders this use neither bona fide offering of goods or services under Policy 4(c)(i) nor a legitimate noncommercial or fair use of the [domain name] under Policy 4(c)(iii)"))
* the unauthorized use of the Complainant's trade mark in a domain name used to point to and further, by that means, to promote the sale of third-party vitamins under a domain that incorporates the TEVA mark covering vitamins, is "per se" bad faith use, SANOFI-AVENTIS v. Health Care Marketing Company, WIPO Case No. D2007-0475 (Dec. 28, 2007) (transferring <ambienforyou.com> notwithstanding that there is a possibility the confusion would not last beyond the arrival at the target website to which the domain name is directed), because "Respondent has been astute to create the possibility of such confusion and to profit by it."
* the Domain Name was masked with privacy, which alone is not necessarily indicative of bad-faith, but in this case, the registrant organization behind the masked proxy services identifies the Respondent as an organization that is not listed with the Israeli Corporations Authority. Therefore, the company does not seem to be a real corporation in Israel, as all corporate entities are registered with the Israeli Corporations Authority in Israel.

Accordingly, the Panel finds that the Respondent registered and is using the Domain Name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TEVA-SHOP.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2017-04-01

Publish the Decision