Decision for dispute CAC-UDRP-106936

Case number	CAC-UDRP-106936
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Domain names	tevapharmnexara.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Teva Pharmaceutical Industries Ltd

Complainant representative

Organization	SILKA AB

Respondent

Name	aoasppspa alalalla

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns a portfolio of word and combined trade mark registrations consisting of and incorporating the names TEVA, TEVA PHARM and TEVAPHARM, including the Israeli national trade mark TEVA, registration No. 41075, first registered on 05 July 1977 in international class 5; the US national trade mark TEVA, registration No. 1567918, first registered on 28 November 1989 in international class 5; the European Union trade mark TEVA, registration No. 001192830, first registered on 18 July 2000 in international classes 3, 5 and 10; the International trade mark TEVA, registration No. 1319184, first registered on 15 June 2016 in international classes 5, 10 and 42; the European Union trade mark TEVA, registration No. 015135908, first registered on 28 July 2016 in international classes 1, 3, 5, 9, 10, 16, 35, 42 and 44; the US national trade mark TEVA, registration No 5984626, first registered on 11 February 2020 in international class 36; the Israeli national trade mark TEVA PHARM, registration No. 164291, first registered on 5 May 2004 in international class 5; and the European Union trade mark TEVA PHARM, registration No. 018285645, first registered on 09 January 2021 in international classes 5 and 44. The aforementioned trade mark registrations of the Complainant pre-date the registration of the disputed domain name.

Furthermore, the Complainant owns a portfolio of domain names consisting of or incorporating the name TEVA, including the domains <tevapharm.com>, first registered on 14 June 1996; <tevapharma.com>, first registered on 18 December 2000; <tevapharm.us>, first registered on 24 April 2002, which are connected to the official websites of the Complainant and its affiliates through which they inform Internet users about their products and services.

FACTUAL BACKGROUND

The Complainant is an internationally active pharmaceutical company established in 1901. The Complainant maintains a portfolio of approximately 3,600 medicines, reaching some 200 million people across 58 markets and six continents. The Complainant has over 50 manufacturing facilities and in the region of 37,000 employees. The Complainant has repeatedly featured in lists collating the world's top generic drug manufacturers.

The disputed domain name <tevapharmnexara.com> was registered on 15 September 2024 and resolves to a parked page with pay-per-click links, including in relation to products and brands not associated with the Complainant.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
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 trade mark 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

With regard to the first UDRP element, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade marks TEVA and, in particular, TEVAPHARM and TEVA PHARM. Indeed, the disputed domain name incorporates the Complainant's trade marks in their entirety but adds the term "nexara" as a suffix to the Complainant's trade marks. The Panel follows in this respect the view established by numerous other decisions that a domain name which wholly incorporates a complainant's registered trade mark may be sufficient to establish confusing similarity for the purposes of the UDRP (see, for example, WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin <porsche-autoparts.com>). The Panel further considers it to be well established that the addition of a generic or descriptive term does not allow a domain name to avoid confusing similarity with a trade mark (see, for example, WIPO Case No. D2019-2294, Qantas Airways Limited v. Quality Ads <qantaslink.com>; and CAC Case No. 102137, Novartis AG v. Black Roses <novartiscorp.com>). Other panels have previously found that "[W]here the relevant trademark is recognizable within the Disputed Domain Name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element" (see WIPO Overview 3.0, section 1.8; and, for example, WIPO Case No. D2023-2542, Merryvale Limited v. tao tao <wwbetway.com>; and WIPO Case No. D2020-0528, Philip Morris Products S.A. v. Rich Ardtea <global-iqos.com>). Against this background, the Panel finds that the addition of the term "nexara" is not sufficient to alter the overall impression of the designations as being connected with the Complainant's trade marks, which are clearly recognisable in the disputed domain name, and does not prevent a likelihood of confusion between the disputed domain name and the Complainant, its trade marks and associated domain names. To the contrary, the disputed domain name rather adds to the likelihood of confusion because the addition of the artificial term "nexara", in conjunction with the Complainant's trade marks TEVA, TEVA PHARM and TEVAPHARM implies that the disputed

domain name is linked to the Complainant and its business.

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain name. The Panel follows in this regard the view established by numerous other decisions that use of a domain to host a parked page comprising pay-per-click commercial links does not represent a bona fide offering of goods or services where such links compete with or capitalise on the reputation and goodwill of the complainant's trade mark, or otherwise mislead Internet users (see, for example, Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend <vancesecurity.com>, <vancesecurity.net>, <vancesecurity.org> (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees); and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe <mayflowermovers.com> ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.")). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised to make any use of the Complainant's trade marks or to apply for or use the disputed domain name. Additionally, the Whois information for the disputed domain name does not suggest that the Respondent is commonly known by the disputed domain name <tevapharmnexara.com>. Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name, as is equally not the case here (see, for example, Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii)."). Against this background, and absent 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.

With regard to the third UDRP element, it is reasonable to infer that the Respondent either knew, or should have known, that the disputed domain name would be confusingly similar to the Complainant's trade marks, and that the Respondent registered the disputed domain name in full knowledge of the Complainant's trade marks. Indeed, if the Respondent had carried out a Google search for the terms "Teva" and "Tevapharm", the search results would have yielded immediate results related to the Complainant, its websites, and its connected business and services. Indeed, it is likely that the disputed domain name would not have been registered if it were not for the Complainant's trade marks (see, for example, WIPO Case No D2004-0673 Ferrari Spa v. American Entertainment Group Inc <ferrariowner.com>). Furthermore, the website related to the disputed domain name resolves to a parking page with pay-per-click links. Based on the decisions of other panels in similar cases, the Panel regards this as an attempt by the Respondent to attract Internet users for commercial gain to its own website based on the Complainant's trade marks, and as further evidence of bad faith (see, for example, WIPO Case No D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC <studiocanalcollection.com> ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.")). Indeed, it is difficult to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate on the grounds that it would constitute passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law in circumstances where that disputed domain name corresponds to the Complainant's trade marks and is similar to the Complainant's genuine domain names currently used by the latter to promote its goods and services. Finally, it appears that the disputed domain name has been configured with MX records, which suggests that it may actively be used for e-mail purposes, or that such use is at least contemplated. In circumstances where there is, as is the case here, a high risk and likelihood of confusion on the part of Internet users as to the affiliation between the disputed domain name and the Complainant, the Panel concludes that there is no apparent basis on which the Respondent would be able to make any good faith use of the disputed domain name as part of an e-mail address (see, for example, WIPO Case No. D2023-2997, AB Electrolux v. domain admin <electroluxweb.com> ("Also, the activation of MX records (submitted by the Complainant in Annex V) reveals that the Respondent might intend to send suspicious emails such as phishing emails, which only emphasize the Respondent's bad faith in the use and registration of the disputed domain name."); Forum Case No. 1998634, Morgan Stanley v. Stone Gabriel <morgan-stanly.co> ("The Panel has determined that there are MX records for the disputed domain name, therefore it might be intended for use in an email phishing scheme."); and WIPO Case No. D2022-3791, TEVA Pharmaceutical Industries Limited v. Name Redacted <tevapharmamumbai.com> ("The Panel finds that Respondent's registration of MX records in respect of the disputed domain are further circumstances demonstrating bad faith registration and use of the disputed domain name.")). Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using the disputed 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. **tevapharmnexara.com**: Transferred

PANELLISTS

Name	**Gregor Kleinknecht LLM MCIArb**

DATE OF PANEL DECISION 2024-11-20

Publish the Decision