Decision for dispute CAC-UDRP-106922

Case number	CAC-UDRP-106922
Time of filing	2024-10-14 14:13:18
Domain names	tevapharm.live

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Teva Pharmaceutical Industries Ltd

Complainant representative

Organization	SILKA AB

Respondent

Name	Richard Keen

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 holds numerous trademarks for TEVA, and has registrations for TEVA PHARM and TEVAPHARM, covering many jurisdictions around the world.

The Complaint is based on the following Complainant's trademarks:

- “TEVA”, Israel trademark registration No. 41075, registered on 05 July 1977, for goods in class 5;

- “TEVA”, US trademark registration No. 1,567,918, registered on 28 November 1989, for goods and services in class 5;

- “TEVA”, European Union trademark registration No. 001192830, registered on 28 August 2000, for goods and services in class 5;

- “TEVA”, semi-figurative international trademark registration No. 1319184, registered on 15 June 2016, for goods and services in classes 5, 10 and 42;

- “TEVA”, semi-figurative European Union trademark registration No. 015135908, registered on 328 July 2016, for goods and services in classes 1, 3, 5, 9, 10, 16, 35, 42, 44;

- “TEVA PHARM”, Israel trademark registration No. 164291, registered on 05 May 2004, for goods in class 5;

- “TEVAPHARM”, European Union trademark registration No. 018285645, registered on 09 January 2021, for goods and services in

classes 5 and 44.

The Complainant provides evidences of his ownership.

The Complainant and its affiliated companies hold many domain names which encompass the TEVA mark, tailored for different jurisdictions around the world. For example, the Complainant uses <tevausa.com> in connection with its United States site, <tevauk.com> for the United Kingdom, and <tevaitalia.it> for Italy. The Complainant's uses the domain names <tevapharm.com>, <tevapharma.com> and <tevapharm.us>.

The Complainant also refers to the goodwill and recognition that it has attained under the TEVA brand, which has become a distinctive identifier of its offerings.

The disputed domain name <tevaharm.live> was registered on September 16, 2024, by an individual, Mr. Richard Keen, using a privacy shield service.

Multiple MX records were configured for the disputed domain name

FACTUAL BACKGROUND

The Complainant, established in 1901, is an internationally active and widely known pharmaceutical company. The Complainant maintains a portfolio of approximately 3,600 medicines, reaching some 200 million people across 58 markets and six continents every day. The Complainant has over 50 manufacturing facilities and in the region of 37,000 employees. Further information regarding the Complainant's offerings and history can be found on its main international website, <tevapharm.com>, the domain of which was registered in 1996. The Complainant is repeatedly featured in lists collating the world's top generic drug manufacturers.

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.

The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The disputed domain name comprises, in full, each of the Complainant's TEVA, TEVA PHARM and TEVAPHARM trademarks.

The TEVA, TEVA PHARM and TEVAPHARM trademarks are clearly recognisable in the disputed domain name, which is composed with the entire TEVAPHARM trademark.

The Panel shall disregard the '.live' extension, which forms a standard registration requirement and as such is disregarded under the first element confusing similarity test. The Complainant requests that the Panel finds the disputed domain name identical/confusing similar to the TEVA, TEVA PHARM and TEVAPHARM trademarks (hereinafter collectively referred to as 'the TEVA Marks') in which the Complainant has rights for the purposes of satisfying paragraph 4(a)(i) of the Policy.

The Respondent has no rights or legitimate interests in respect of the domain name

To the Complainant's knowledge, the Respondent does not have trademark rights for, nor is it commonly known by, 'tevapharm' or any similar term. The Respondent is not connected to nor affiliated with the Complainant and has not received license or consent to use the TEVA Marks in any way.

The Complainant further submits that the Respondent has not used, nor prepared to use, the disputed domain name in connection with a bona fide offering of goods or services, nor a legitimate non- commercial or fair use.

In this regard the Complainant notes that the disputed domain name does not resolve to an active site.

Panels have repeatedly found that such lack of use is not consistent with a bona fide offering within the meaning of paragraph 4(c)(i) nor a legitimate non- commercial or fair use within the meaning of paragraph 4(c)(iii) of the Policy.

The Complainant relies on the WIPO Case No. D2023-1279 Teva Pharmaceutical Industries Ltd. v. Solomon sherif : "According to the Complainant's undisputed allegations, no content is displayed on the website to which the disputed domain name resolves. Such use can neither be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name in the sense of paragraph 4(c)(i) and (iii) of the Policy'"

The Complainant further submits that the disputed domain name carries a high risk of implied affiliation to the Complainant.

The Complainant has presented a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of satisfying paragraph 4(a)(ii) of the Policy.

The domain name was registered and is being used in bad faith

Under the Policy, bad faith is understood to occur where a respondent 'takes unfair advantage of or otherwise abuses a complainant's mark' (see WIPO Overview 3.0, section 3.1). The Complainant submits that the Respondent has both registered and is using the disputed domain name in bad faith, in accordance with paragraph 4(a)(iii).

Bad faith registration

The Complainant has accrued substantial goodwill and recognition in the TEVA brand, which was first registered as a trademark more than 40 years ago.

The Complainant's goods and services reach some 200 million consumers each day across 58 markets and six continents.

The Complainant highlights that the TEVA Marks are clearly identifiable in publicly accessible trademark databases. Additionally, the top results from a Google search of 'tevapharm' exclusively pertain to the Complainant's offerings.

It is therefore evident that, notwithstanding other considerations, the simplest degree of due diligence would have otherwise made any prospective registrant of the disputed domain name aware of the Complainant's rights in the globally renowned TEVA Marks and brand.

Given the disputed domain name's composition, and the configuration of multiple MX records to it, it has been selected by the Respondent with knowledge of, and the intention to capitalise on, the Complainant's TEVA Marks.

Bad faith use

The Complainant's TEVA Marks are distinctive within its industry and enjoy a worldwide reputation.

There is no evidence of the Respondent having made, or having attempted to make, any good faith, legitimate non-commercial or fair use of the Domain Name, or of being commonly known by such. It is also clear, noting the disputed domain name's composition, that no good faith use could be made of it by the Respondent, i.e., no use which would not unfairly mislead users and capitalise on confusion with the Complainant.

A finding of bad faith under the passive holding doctrine has been made in multiple previous domain name disputes concerning the Complainant's TEVA brand.

The Complainant lastly submits that the Respondent has configured the disputed domain name with multiple MX (mail exchange) records.

It strongly indicates that the Respondent may use the disputed domain name to engage in e-mail phishing activity.

Internet users receiving e-mails from an address ending in '@tevapharm.live' are, given the disputed domain name's high similarity to the Complainant's TEVA trademark and to the official www.tevapharm.com website, likely to form the false impression that any such correspondence has been sent by the Complainant, or by any duly authorized person.

There is no conceivable good-faith explanation for the Respondent's decision to attach MX records to the disputed domain name.

Panels have repeatedly found that a Respondent's activation of MX records, in circumstances where there is a high likelihood of internet-user confusion, is indicative of the respondent's intention to engage in phishing/related illegitimate activities and constitutes evidence of bad faith.

In view of the foregoing, the Complainant requests that the Panel makes a finding of bad faith registration and use under paragraph 4(a)(iii) of the Policy.

No administratively compliant Response has been filed.

RIGHTS

Complainants have proved that they are the respective registered owners of the TEVA, TEVA PHARM and TEVAPHARM trademarks, which are prior to the registration date of the disputed domain name.

The disputed domain name is composed of the Complainant's TEVA, TEVA PHARM trademarks and incorporates the entire TEVAPHARM trademark, without the addition of any other term.

The TEVAPHARM trademark is distinctive and is clearly recognizable in the disputed domain name <tevapharm.live>.

The extension ".live" is not taken into consideration.

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

As set forth by Paragraph 4 (c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to the Respondent of the dispute, its use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent, (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel relies on the produced pieces of evidence to find that these trademarks are well-known in the pharmaceutical field.

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain name incorporating its trademarks.

The Respondent does not use the disputed domain name in connection with a bona fide offering of goods or services and does not make a legitimate noncommercial or other fair use of the disputed domain name.

The Respondent did not respond to the Complaint to rebut the Complainant's prima facie case.

Consequently, it did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the Disputed Domain Name.

There is no indication that the Respondent is known under the Disputed Domain Name.

In the circumstances of this case, the Panel finds that the Complainant has established a prima facie case of the Respondent's lack of rights or legitimate interests in relation to the Disputed Domain Names, which the Respondent has not rebutted.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by an Administrative Panel to be evidence of the bad faith registration and use of a domain name. It provides that:

"For the purposes of Paragraph 4(a) (iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location."

The position of the Complainant on the market is well established.

The Respondent could not ignore the rights on the prior TEVA, TEVA PHARM and TEVAPHARM trademarks when registering the disputed domain name.

The configuration of MX servers proves that the intent of the Respondent is to use the disputed domain name to send emails ...@tevapharm.live

The Complainant will have no control on the content and the purpose of such emails. It will expose the Complainant and the internet users to any type of fraudulent practice, like impersontaing the Complainant to abuse these internet users.

The Panel is of the opinion that this is bad faith use in the meaning of Paragraph 4(b)(iv) of the Policy: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location."

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

RIGHTS

The disputed domain name is composed of the Complainant's TEVA, TEVA PHARM trademarks and incorporates the entire TEVAPHARM trademark, without the addition of any other term.

The TEVAPHARM trademark is distinctive and is clearly recognizable in the disputed domain name <tevapharm.live>.

NO RIGHTS OR LEGITIMATE INTEREST

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain name incorporating its trademarks.

The Respondent does not use the disputed domain name in connection with a bona fide offering of goods or services and does not make a legitimate noncommercial or other fair use of the disputed domain name.

The Respondent did not respond to the Complaint to rebut the Complainant's prima facie case.

Consequently, it did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name .

There is no indication that the Respondent is known under the disputed domain name .

In the circumstances of this case, the Panel finds that the Complainant has established a prima facie case of the Respondent's lack of rights or legitimate interests in relation to the disputed domain name, which the Respondent has not rebutted.

BAD FAITH REGISTRATION AND USE

The Panel is of the opinion that this is bad faith use in the meaning of Paragraph 4(b)(iv) of the Policy: "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your 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.live**: Transferred

PANELLISTS

Name	**Marie-Emmanuelle Haas Avocat**

DATE OF PANEL DECISION 2024-11-20

Publish the Decision