

## **ADMINISTRATIVE PANEL DECISION**

Gilead Sciences, Inc. v. Mary A Wright, Gilead Support Foundation  
Case No. D2023-3424

### **1. The Parties**

The Complainant is Gilead Sciences, Inc., United States of America, internally represented.

The Respondent is Mary A Wright, Gilead Support Foundation, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <gileadsupportfoundation.com> is registered with CloudFlare, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 10, 2023. On August 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 14, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Data Redacted) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 21, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on the same day.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 29, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 25, 2023.

The Center appointed Angela Fox as the sole panelist in this matter on October 4, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

The Complainant is a large biopharmaceutical company, founded in 1987 in Foster City, California, but trading internationally. It carries out pharmaceutical research and develops and commercializes innovative medicines, including in particular products which prevent and treat HIV infection and products which cure hepatitis C. The launch of its recently approved pharmaceutical product, BIKTARVY, had sales exceeding USD 4.7 billion in 2019.

In 2022, the Complainant's total worldwide revenue was approximately USD 27.3 billion, and it ranked number 129 in the Fortune 500 Companies list. The Complainant is a member of the S&P 500 and has around 14,500 employees worldwide. The Complainant carries out its business under the name and trademark GILEAD, which it claims is well-known for pharmaceutical products and medical information services. During the beginning of the COVID-19 pandemic, it was in the news due to the high-profile use of its VEKLURY treatment (remdesivir) which was authorized for emergency use by the United States Food and Drug Administration ("FDA") in 2020 and later received full FDA approval.

The Complainant also operates a nonprofit organization, Gilead Foundation, which makes grants to local communities and promoted health equity and other social issues.

The Complainant owns numerous trademark registrations for GILEAD and marks including GILEAD, including the following, details of which were annexed to the Complaint.

- GILEAD – United States Reg. No. 3,251,595, registered on June 12, 2007, in Class 5;
- GILEAD | FOUNDATION – United States Reg. No. 6,840,784, registered on September 6, 2022, in Class 36;
- GILEAD – Singapore Reg. No. T0803446D, registered on March 18, 2008, in Class 5;
- GILEAD – India Reg. No. 2363685, registered on July 13, 2012 in Class 5;
- GILEAD – European Union Reg. No. 3913167, registered on November 7, 2005, in Classes 1, 5 and 42;
- GILEAD – China Reg. No. 816124, registered on February 21, 1996, in Class 5;
- GILEAD – Brazil Reg. No. 904960269, registered on July 7, 2015, in Class 5;
- GILEAD – Australia Reg. No. 1522129, registered on June 26, 2012, in Class 5;
- GILEAD FOUNDATION CREATING POSSIBLE FUND and Design – United States Reg. No. 6841021, registered on September 6, 2022, in Class 36.

The disputed domain name was registered on March 12, 2023. It does not link to any content.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant submits that the disputed domain name is identical or confusingly similar to its registered trademarks. The disputed domain name consists of GILEAD plus the generic or descriptive words "support" and "foundation", which the Complainant submits renders the domain name virtually identical to its registered GILEAD and GILEAD FOUNDATION marks and likely to lead Internet users to perceive it as denoting a website for the Complainant's charitable organization. The Complainant submits that the Top-Level Domain ".com" is irrelevant in determining whether the disputed domain name is confusingly similar to the GILEAD mark.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not associated or affiliated with the Complainant, and the Complainant has not granted any rights to the Respondent to use the GILEAD or GILEAD FOUNDATION marks or to register the disputed domain name. The Respondent is making no use of the disputed domain name, which does not link to any content. The Complainant notes that other panels have found that the Complainant's GILEAD trademark is "long established, highly valuable and globally registered" and that it is a "famous registered trademark" (*Gilead Sciences, Inc. v. Super Privacy Service LTD c/o Dynadot / Kolawole Feyisitan*, WIPO Case No. [D2020-3517](#)). In that case, concerning <gileadafrica.com>, the panel stated that it "...cannot conceive of any potential use of the disputed domain name, for either a website or an email address that could be *bona fide* or would not conflict with the Complainant's legitimate use of its trademark". The Complainant submits that in this case also, the Complainant's GILEAD mark is so well known and recognized, there can be no legitimate use of the disputed domain name by the Respondent.

Finally, the Complainant submits that the disputed domain name was registered and has been used in bad faith. When viewed in the totality of the circumstances, the Complainant submits that the Respondent's acts overwhelmingly demonstrate bad faith use and registration, taking account of the similarity of the disputed domain name to both GILEAD and GILEAD FOUNDATION, with only the insertion of descriptive term "support", and the Respondent's use of a privacy shield.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions and is in default. No exceptional circumstances explaining the default have been put forward. Therefore, in accordance with paragraphs 14 (a) and (b) of the Rules, the Panel will decide the Complaint and shall draw such inferences as it considers appropriate from the Respondent's default.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the panel finds that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

All three elements must be present before a complainant can succeed in an administrative proceeding under the Policy.

### **A. Identical or Confusingly Similar**

The Complainant has proved that it has registered trademark rights in marks consisting of or incorporating GILEAD and GILEAD FOUNDATION, which pre-date the registration of the disputed domain name.

The disputed domain name includes GILEAD in its entirety, followed only by the words "support foundation", and the Top-Level Domain name suffix ".com". As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("the WIPO Overview"), at para. 1.11.1, the Top-Level Domain suffix is a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Under para 1.7 of the WIPO Overview, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

In this case, the disputed domain name incorporates the entirety of the Complainant's registered GILEAD trademark, which is clearly recognizable within the disputed domain name. The Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

## **B. Rights or Legitimate Interests**

The burden of proving absence of rights or legitimate interests in a domain name falls on complainants, but panels have long recognized that the information needed to prove such rights or legitimate interests is normally in the possession of respondents.

In order to avoid requiring complainants to prove a negative, which will often be impossible, UDRP panels have typically accepted that once a complainant has established a *prima facie* case that a respondent lacks rights or legitimate interests, the respondent carries the burden of proving that it does indeed have such rights or interests (see, *inter alia*, *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. [D2004-0110](#)).

In the present case, the Complainant has put forward a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent is not making any commercial or noncommercial use of it.

The Respondent has not responded to the Complaint, and the only fact on the record that could potentially give rise to a legitimate right or interest on the part of the Respondent is the fact that the WhoIs details disclosed by the Registrar name the Respondent as "Mary A Wright, Gilead Support Foundation". However, without more than this, the Panel is not persuaded that the Respondent is commonly known by a name corresponding to the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. There is no evidence as to the existence and nature of an entity by the name of "Gilead Support Foundation", nor is there any evidence that the Respondent has actually been commonly known by this name, as opposed to merely submitting it as part of its WhoIs details. If the Respondent had become commonly known by a name corresponding to the disputed domain name, it would have been incumbent on it to prove that fact on the balance of probabilities. As the Respondent did not reply to the Complaint, it has made no effort to do so.

Taking all of the above into account, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

## **C. Registered and Used in Bad Faith**

The Complainant has been carrying on business internationally under the GILEAD mark for over 30 years.

The Complainant's business is very substantial and prior panels have found that GILEAD is a well-known mark in the pharmaceutical field. The Complainant has also shown that it operates a nonprofit organization under the name Gilead Foundation. The inclusion of the GILEAD mark and the word "foundation" in the disputed domain name suggest that the Respondent knew of and was targeting the Complainant in registering the disputed domain name, and the Respondent has not put forward any alternative explanation for its conduct.

The disputed domain name does not link to any content, but this does not necessarily prevent a finding of bad faith registration and use under the Policy under the passive holding doctrine.

Section 3.3 of the [WIPO Overview 3.0](#) states:

"While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In this case, the Complainant's GILEAD trademark is inherently distinctive and appears to enjoy a reputation in the pharmaceutical field (*Gilead Sciences, Inc. v. Super Privacy Service LTD c/o Dynadot / Kolawole Feyisitan*, WIPO Case No. [D2020-3517](#)). The Respondent has made no effort to respond to the Complaint or to provide any evidence of actual or contemplated good-faith use of the disputed domain name. Given the Complainant's high-profile reputation in the pharmaceutical field, and its own Gilead Foundation, it is difficult to conceive of a good faith use to which the inherently misleading disputed domain name could be put. The Respondent failed to respond to the Complaint and has not put forward any plausible good faith explanation for its registration of the mark.

Taking all of the above into account, the Panel concludes that the disputed domain name was registered and has been used in bad faith.

## 7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <gileadsupportfoundation.com> be transferred to the Complainant.

*/Angela Fox/*

**Angela Fox**

Sole Panelist

Date: October 20, 2023