

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Ltd. v. alabi babatunde
Case No. D2023-4376

1. The Parties

The Complainant is Teva Pharmaceutical Industries Ltd., Israel, represented by SILKA AB, Sweden.

The Respondent is alabi babatunde, United States of America.

2. The Domain Name and Registrar

The disputed domain name <novotevapharma.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 23, 2023. On October 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 25, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 25, 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 October 26, 2023.

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 November 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 29, 2023.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on December 12, 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 one of the world's largest generic medicines producers, with a portfolio of 3,600 different products in nearly every therapeutic area. Its registered business address is in Israel. In 2022, the Complainant was active in over 60 countries, it had revenues of more than USD 14.9 billion and more than 37,000 employees internationally.

The Complainant has a global portfolio of TEVA formative trademarks including International Trademark Registration no. 1319184, registered on June 15, 2016, in international classes 5, 10, and 42 and European Union Trademark Registration no. 000115394, registered on April 29, 1998, in international class 5. The Complainant also owns European Union Trademark Registration no. 018285645 for the word mark TEVAPHARM, registered on January 9, 2021, in international classes 5 and 44 and Chile Trademark Registration no. 1280482 for the word mark TEVAPHARMA, registered on March 3, 2017, in international classes 5 and 44.

The Complainant's online presence is to be found, *inter alia*, at the domain name <tevapharm.com>, registered on June 14, 1996, which hosts a website that displays information about the Complainant's group and its activities.

The disputed domain name was registered on September 22, 2023. It resolves to a partially completed website purportedly operated by a company called "Novoteva Pharmaceutical Limited", and identical to a website operated by Sohdong Pharmaceutical Limited. MX records have been configured for the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name reproduces its TEVA, TEVAPHARM and TEVAPHARMA trademarks in full, with only the addition of the dictionary word "novo" which does not alleviate the close similarities between the marks and the disputed domain name. In any case, the Complainant points to section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") which says that "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 disputed domain name, the disputed domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". [WIPO Overview 3.0](#), section 1.8 further confirms that the addition of a term such as NOVO in this case does not prevent a finding of confusing similarity, the Complainant points out.

The Complainant asserts that in accordance with [WIPO Overview 3.0](#), section 2.1, it falls to the Complainant to make out only a *prima facie* case. The Complainant states that it has not authorized the Respondent to use its TEVA, TEVAPHARM and TEVAPHARMA marks for any reason or in any manner; has found no evidence that the Respondent has been commonly known by the disputed domain name or by the term "novotevapharma"; and has found nothing to suggest that the Respondent holds any trademark rights on the disputed domain name or the term "novotevapharma".

The Complainant says that the company, Novoteva Pharmaceutical Limited, which purports to use the disputed domain name to operate an online presence, does not appear to hold any trademark rights either. The Complainant adds that the disputed domain name and the term “novotevapharma” do not have any primary meaning in the English language. There are, however, no other online reference to the company Novoteva Pharmaceutical Limited to be found. The relevant website is only partially complete and appears identical to a website operated by Sohdong Pharmaceutical Limited. The Complainant contends that in light of these facts and its own long-standing use and reputation in the TEVA, TEVAPHARM and TEVAPHARMA marks, the Respondent has the intent to divert Internet users looking for the Complainant’s products to another website to profit in some way. The Complainant contends that such activity cannot be considered a *bona fide* offering of goods and services and says that there is no doubt that the disputed domain name carries a high risk of implied false affiliation with the Complainant and its activities. The Complainant contends that no possible situation can be conceived of in which the use of the disputed domain name would not infringe its rights in TEVA, TEVAPHARM and TEVAPHARMA.

Further, the Complainant points out that the disputed domain name was registered on September 22, 2023, whereas its TEVA, TEVAPHARM and TEVAPHARMA marks had been registered internationally for many years at the date. The prevalence of the Complainant and its marks on search engines and on the web makes it implausible that the Respondent was unaware of them when the disputed domain name was registered, the Complainant says. In any case a simple Google or trademark register search would have identified the Complainant and its rights in the relevant marks.

The Complainant also contends that taking into consideration the fact that the disputed domain name resolves to a website related to pharmaceutical products (a field in which the Complainant maintains it is well-known), and that it incorporates the entirety of the TEVA, TEVAPHARM and TEVAPHARMA marks, the Respondent registered the disputed domain name in bad faith, in order to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and its marks.

Finally, the Complainant contends that its trademarks are well-known marks, and that UDRP panels have consistently held that the mere registration of a domain name that is identical or confusingly similar to a well-known trademark by an unaffiliated entity, itself creates a presumption of bad faith (in accordance with section 3.1.4 of [WIPO Overview 3.0](#)).

The Complainant also points out that the disputed domain name resolves to a partially complete website (with many inactive sections) by which the company “Novoteva Pharmaceutical Limited” apparently operates its online presence. Since the disputed domain name incorporates the Complainant’s well-known TEVA, TEVAPHARM and TEVAPHARMA marks in full, is extremely similar to the Complainant’s domain name <tevapharm.com> and is used to resolve to a website apparently related to a pharmaceutical company, there is clearly the potential for trademark abuse through user confusion or fraudulent employment of the disputed domain name. Further, the Complainant points out that the Respondent’s use of a privacy registration service for the disputed domain name is an additional indication of bad faith registration and use.

Finally, the Complainant contends that MX servers were configured in relation to the disputed domain name, which indicates a risk that the Respondent uses the disputed domain name to create an email address with the suffix “@novotevapharma.com” for deceiving purposes. Previous UDRP decisions have considered the activation of MX servers as additional evidence of bad faith, the Complainant says.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. "[WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The disputed domain name resolves to a website that purports to be operated by "Novoteva Pharmaceutical Limited", but no evidence of the existence of this company is on the record. Given the reputation that attaches to the TEVA and TEVAPHARM marks of the Complainant, it is difficult to envision how a company by the name "Novoteva Pharmaceutical Limited" could operate legitimately under that name in the pharmaceutical sector. There is no evidence that the website to which the disputed domain name resolves is legitimate, and it is obviously not legally connected to the Complainant. The latter has not authorized the use of its registered trademarks in relation to the website or the disputed domain name.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Panels have held that the use of a domain name for illegal activity, in this case passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. It is apparent that the website to which the disputed domain name resolves was established by reference to a fake corporate entity which incorporates the Complainant's registered trademark in its name. The aim of this ruse is to generate a false impression with consumers that the said website is linked to the Complainant in a legitimate manner. That is not the case. The composition of the disputed domain name and the ease with which the Respondent could have ascertained the Complainant's exclusive rights indicates registration in bad faith. The Respondent was clearly aware that the Complainant is active in the pharmaceutical sector, given the content of the website to which the disputed domain name resolves.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy.

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 <novotevapharma.com> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: December 26, 2023