

## **ADMINISTRATIVE PANEL DECISION**

Teva Pharmaceutical Industries Ltd. v. George Neil  
Case No. D2023-4557

### **1. The Parties**

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

The Respondent is George Neil, United States of America (“United States”).

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

The disputed domain name <tevaonlinepharmacy.com> is registered with Key-Systems GmbH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 2, 2023. On November 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 2, 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 (On behalf of tevaonlinepharmacy.com OWNER / c/o whoisproxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 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 November 13, 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 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 4, 2023.

The Center appointed Wilson Pinheiro Jabur 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 a pharmaceutical company established in 1901, presently counting with 53 manufacturing facilities in 33 countries and employing around 37,000 people.

The Complainant's official website is available at <tevapharm.com>, registered in 1996. The Complainant is the owner of the following, amongst other, trademark registrations:

- Israel trademark registration No. 41075, for the word mark TEVA, registered on July 5, 1977, successively renewed, in class 5;
- United States trademark registration No. 1,567,918, for the word mark TEVA, registered on November 28, 1989, successively renewed, in class 5; and
- European Union Trade Mark registration No. 001192830, for the word mark TEVA, registered on July 18, 2000, successively renewed, in classes 3, 5 and 10.

The disputed domain name was registered on August 19, 2023, and presently does not resolve to an active webpage. In the past the disputed domain name was used in connection with the offer of online sale of purportedly "prescription free" pharmaceutical products (Annex 8 to the Complaint). Active mail servers (MX records) are associated with the disputed domain name.

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

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 its TEVA trademark has attained goodwill and recognition, thus having become a distinctive identifier of its goods and services.

Moreover, the Complainant submits that the disputed domain name reproduces in its entirety the Complainant's trademark with the mere addition of the terms "online" and "pharmacy" which do not prevent a finding of confusing similarity given that the Complainant's trademark remains dominant, distinctive, and clearly recognisable in the disputed domain name.

The Complainant further points out that email servers have been configured and are active (Annex 11 to the Complaint) what indicates that the Respondent could use the disputed domain name in connection with fraudulent emails.

As to the Respondent's lack of rights or legitimate interests in respect of the disputed domain name, the Complainant contends that the Respondent is not known, nor has ever been known, by the disputed domain name, and the Respondent does not have registered any trademarks, nor does the Respondent have unregistered trademark rights, for "tevaonlinepharmacy" or any similar term; also not having the Respondent been licensed by the Complainant to register domain names featuring its TEVA mark, nor any confusingly similar variant thereof. In addition to that, the Complainant submits that the disputed domain name has been used to resolve to a website which, with the heading "Teva Online Pharmacy", attempted to pass off as the Complainant and purportedly offered the online sale of pharmaceutical goods in connection with the TEVA brand, thus being incapable of constituting fair use.

As to the registration of the disputed domain name in bad faith, the Complainant asserts that the Respondent was evidently aware of the Complainant's distinctive and well-known trademark at the time of the registration of the disputed domain name in view of the composition of the disputed domain name which, under the Complainant's view, effectively impersonates the Complainant. Further, the disputed domain name has been used to resolve to a website which brandished the TEVA mark while purportedly offered for sale prescription-free pharmaceutical goods. In addition to that, the present passive holding of the disputed domain name amounts to the Respondent's bad faith given the configuration of active MX-records what indicates that more than impersonating the Complainant, the Respondent could also tarnish the Complainant's image by using the disputed domain name in connection with fraudulent activities.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

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

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

### **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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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 ("online" and "pharmacy") 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**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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 Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules.

As seen above, the composition of the disputed domain name, wholly incorporating the Complainant’s well-known trademark together with terms that refer to the Complainant’s business carries a risk of implied affiliation, which is reinforced by the use made of the disputed domain name in connection with an online website purportedly offering for sale prescription free pharmaceutical products. See section 2.5.1, [WIPO Overview 3.0](#).

Also, the lack of evidence on record showing that the Respondent has been commonly known by the disputed domain name, is a further indication that the Respondent lacks rights or legitimate interests in the disputed domain name.

In addition to that and in spite of an apparent inactive use of the disputed domain name, active mail servers have been configured at the disputed domain name which could be used to impersonate. Indeed such use would not be considered here a *bona fide* offering of goods or services nor legitimate noncommercial or fair use under the Policy.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

a) the composition of the disputed domain name reproducing the Complainant’s well-known trademark and name (previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4);

- b) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name;
- c) the configuration of MX servers in relation to the disputed domain name which could indicate the use of the disputed domain name in connection with fraudulent emails;
- d) the Respondent's choice to retain a privacy protection service; and
- e) the indication of what appear to be false contact details, not being the Center fully able to deliver communications to the Respondent.

In addition to that, Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

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 <tevaonlinepharmacy.com> be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: December 26, 2023