

ADMINISTRATIVE PANEL DECISION

Zydus Lifesciences Ltd. (formerly known as Cadila Healthcare Ltd.) v. Jewella Privacy LLC / DNS, Domain Privacy LTD
Case No. D2022-0880

1. The Parties

The Complainant is Zydus Lifesciences Ltd. (formerly known as “Cadila Healthcare Ltd.”), India, represented by AnantLaw, India.

The Respondent is Jewella Privacy LLC, United States of America (“United States” or “US”) / DNS, Domain Privacy LTD, United States, represented by Greenberg & Lieberman, United States.

2. The Domain Name and Registrar

The disputed domain name <zydus.com> (the “Disputed Domain Name”) is registered with Sea Wasp, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 14, 2022 against three domain names. On March 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the three domain names. On March 15, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the three domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 25, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On March 25, 2022, the Center received an email communication from the Respondent claiming that it has no relationship whatsoever with the registrants of the other two domain names. The Complainant filed an amended Complaint on March 31, 2022 only against the Disputed Domain Name.

The Center verified that the Complaint together with the amended 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 April 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 13, 2022. The Response was filed with the Center May 11, 2022.

The Center appointed Nick J. Gardner, Pablo A. Palazzi, and Alan L. Limbury as panelists in this matter on June 10, 2022. The Panel finds that it was properly constituted. Each member of 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 Panel prefaces this section by noting the Complainant has placed in evidence a very large volume of material without highlighting what within that material is of particular relevance. As best the Panel can determine without spending an inordinate amount of time analysing this material, the pertinent factual background is as follows.

The Complainant is a large Indian pharmaceutical company. Its turnover in 2021 was USD 1.98 billion. Its origins date back to 1952 as the following description shows. A pharmaceutical company called Cadila Laboratories Ltd. was founded in India in 1952. In 1995, Cadila Laboratories Ltd. was restructured and split into two companies called Cadila Pharmaceuticals Ltd. and Cadila Healthcare Ltd. It appears that at about this date Cadila Healthcare Limited adopted the term "ZYDUS" as a brand name for some of its products¹ – its earliest trademark for that term appears to be an Indian trademark filed in 1996 (No. 720998 filed September 2, 1996). It now owns some 140 trademarks which comprise or include the word "zydus" (these are referred to collectively in this decision as the "ZYDUS trademark"). The vast majority of these appear to be registered in India. The Panel has not identified in the evidence any US trademarks. It appears that at some stage Cadila Healthcare Limited adopted the term "ZydusCadila" as a trade name and it registered the domain name <zyduscadila.com> in 1999. It also appears that at some stage after 1995 it may have started describing the corporate group of companies made up of itself and its subsidiaries as the "Zydus Group". Cadila Healthcare Ltd., changed its name to Zydus Lifesciences Ltd on February 24, 2022. The filed evidence shows the Complainant has won a number of awards which reference the name "Zydus" – these date from 2010 onwards. The evidence as to the extent of the Complainant's activities outside India is unclear although it appears to have subsidiaries in a number of jurisdictions – it appears to operate in some 50 countries. Most of these subsidiaries now include the term "zydus" in their name although the Panel has found it impracticable to identify precisely when such names were first adopted. However so far as the US is concerned a company called Zydus Pharmaceuticals (USA) Inc. was incorporated as a wholly owned subsidiary in the US in 2003 and, according to the Complaint, "has come a long way since its first commercial launch in August 2005". It appears to have acquired a number of other pharmaceutical companies in the US and at present it offers more than 450 different products to the US market and is ranked the sixth largest unbranded generic corporation in the US based on dispensed prescriptions.

The Disputed Domain Name was originally registered by the Respondent on November 17, 2004. At present it resolves via multiple redirections to unrelated third-party websites – the precise website appears to vary each time. The Complainant says that previously it has resolved to what seems from the description to be a standard pay-per-click ("PPC") web page containing what are probably algorithmically generated links to third party websites. The Complainant has not however placed in evidence a copy of the page in question.

Between January and March 2022 the Respondent received approximately 20 unsolicited emails from various brokers seeking to buy the Disputed Domain Name for sums between USD 750 and USD 4,000. The underlying purchaser was not disclosed. The Respondent did not reply to any of these emails.

¹ There are at least two references in the Complaint that say the term Zydus was first adopted in 1952 but there is no evidence supporting any use of the term before 1995 and the Panel discounts these references.

5. Parties' Contentions

A. Complainant

The Complainant says that the Disputed Domain Name is identical to its ZYDUS trademark.

It then says that the Respondent has no rights or legitimate interests in the term "zydus". It says it has never authorized the Respondent to use the ZYDUS trademark and the Respondent is not commonly known by the mark ZYDUS. It says "the Complainant owned various trademark regulations in India and in other countries including US, before the disputed domain name(s) were registered" (note however it does not identify any specific US trademark in this respect and the Panel has been unable to find one in the copious evidence submitted).

The Complainant says that the Respondent's registration and use is in bad faith. It says "It can be inferred that the Respondent must have sufficiently known known about the Complaint's trademark and reputation before registering the Disputed Domain Name. Under this circumstance and in the absence of legitimate rights and interests, the Respondent still chose to register the Disputed Domain Name. The Complainant submits that the Respondent is not carrying on any legitimate business under the name Zydus on the domain <zydus.com> and that the Respondent is merely doing 'domain squatting'." And "Based upon the facts, it can be inferred that the Respondent must have sufficiently known known about the Complaint's trademark and reputation before registering the Disputed Domain Name. Under this circumstance and in the absence of legitimate rights and interests, the Respondent still chose to register the Disputed Domain Name, which signifies the presence of malicious intention on the part of the Respondent, to siphon and channel customers of Zydus". It also says "the disputed domain names presently resolve to an active website that offers competing business and services, which leads the Panel [sic] to believe that the Respondent was targeting the Complainant".

B. Respondent

The main points the Respondent makes are as follows.

It had no knowledge of the Complainant or its ZYDUS trademark when it registered the Disputed Domain Name. It is in the business of acquiring generic domain names which it uses for advertising purposes. The Disputed Domain Name was selected as part of the Respondent's business of registering generic domain names. It was chosen because "Zydus" means Jews or Jewish in Lithuanian and because of its generic nature. The Respondent purchased it for its inherent value and not because of any possible connection with the Complainant.

It says the Complaint has used the term "zyduscadila" until very recently and had no reputation in the term "zydus" outside India in 2004. It says the Complainant's website at "www.zyduscadila.com" only went live in 2003 and it had no separate reputation in the term "zydus" prior to the date the Disputed Domain Name was registered. It says that even now the only trademark for the term "zydus" that the Complainant has in the US is a pending application for "Zydus GA Care" which is not yet registered.

The Respondent also relies on the length of time it has used the Disputed Domain Name.

The Respondent provides a declaration from its principal confirming these matters and asks for a finding of reverse domain name hijacking. It relies on the various unsolicited emails it received in 2022 which it says must have been sent on behalf of the Complainant.

6. Discussion and Findings

Preliminary Matters

The Panel notes this is a case where one Respondent (DNS, Domain Privacy LTD) appears to be a privacy or proxy service.

The Panel in this case adopts the approach of most UDRP panels, as outlined in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 4.4.5, as follows:

"Panel discretion

In all cases involving a privacy or proxy service and irrespective of the disclosure of any underlying registrant, the appointed panel retains discretion to determine the respondent against which the case should proceed.

Depending on the facts and circumstances of a particular case, *e.g.*, where a timely disclosure is made, and there is no indication of a relationship beyond the provision of privacy or proxy registration services, a panel may find it appropriate to apply its discretion to record only the underlying registrant as the named respondent. On the other hand, *e.g.*, where there is no clear disclosure, or there is some indication that the privacy or proxy provider is somehow related to the underlying registrant or use of the particular domain name, a panel may find it appropriate to record both the privacy or proxy service and any nominally underlying registrant as the named respondent."

In the present case the Panel considers the substantive Respondent to be Jewella Privacy LLC, and references to the Respondent are to that person.

Substantive Matters

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel in respect of the Disputed Domain Name that:

- (i) the Disputed Domain Name is identical with 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 respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has rights in the ZYDUS trademark. The Panel finds the Disputed Domain Name is identical to this trademark. It is well established that the generic Top-Level Domain ("gTLD"), in this case ".com", does not affect the Disputed Domain Name for the purpose of determining whether it is identical or confusingly similar. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

Accordingly the Panel finds that the Disputed Domain Name is identical to the Complainant's trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to the Respondent of the dispute, use of, or demonstrable preparations to use, the

Disputed 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 has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present case. However this list is non-exhaustive. As a general principle the Panel considers that aggregators/resellers of domain names are entitled to register dictionary words, acronyms and common phrases and have a legitimate interest in so doing. That is subject to the proviso this is not done with the intent to target a trademark holder.

[WIPO Overview 3.0](#) at section 2.1 addresses this issue as follows “For example, generally speaking, panels have accepted that aggregating and holding domain names (usually for resale) consisting of acronyms, dictionary words, or common phrases can be *bona fide* and is not per se illegitimate under the UDRP”.

The Panel agrees with this view and considers the same principles apply where a domain name reseller registers a longer character string simply because it considers that string is attractive and likely to be of value. Again this must be done without intent to target a trademark holder. See in this regard *Tenaris Connections BV v. Domain Admin, HugeDomains.com* WIPO Case No. [D2018-1849](#) – a case which is very similar to the present case.

For reasons discussed in section C below the Panel considers that the Respondent has simply registered a character string it considered attractive and likely to be of value, and did so without knowledge of the Complainant or the ZYDUS trademark.

Accordingly the Panel considers that the Complainant has failed to carry its burden under this element.

C. Registered and Used in Bad Faith

The Panel declines to find that the Disputed Domain Name has been registered and used in bad faith. Although the Complainant has submitted a large amount of material in evidence, that material singularly fails to address the fact that the Respondent registered the Disputed Domain Name in 2004 and that there is no evidence in the Complaint of the Complainant having any reputation outside India in the term “zydus” as at that date. Its usage as at that date appears to be confined to India and even there the Panel is unable to ascertain how well known the term was to the general public. The website at “[www.zyduscadila.com](#)” contained, in 2003 the following statement: “we aim to be leading Asian player by 2010 and a global player by 2020”. That would seem to confirm the limited extent of the Complainant’s international reputation as at 2003 and 2004.

The term “zydus” is a coined word with no meaning in the English language. It is however a five-letter character string which is pronounceable and likely to be of inherent value as a domain name for that reason. The Panel regards with skepticism the Respondent’s claim that it registered the Disputed Domain Name because of its meaning in Lithuanian. It can however accept it registered it because of its inherent value as a five-letter character string. There is no evidence to suggest there is any reason why the Respondent should have any knowledge of the Complainant or the ZYDUS trademark when it did so. The Panel sees no reason to disbelieve the Respondent when it says it had never heard of the Complainant or the ZYDUS trademark when it registered the Disputed Domain Name. The Respondent is using the Disputed Domain Name as part of its advertising business which is in principle a *bona fide* business activity and does not amount to bad faith in the circumstances. Furthermore the fact that the Respondent ignored all offers seeking to purchase the Disputed Domain Name is inconsistent with the Complainant’s analysis of the Respondent’s motives.

So far as the other factors relied upon by the Complainant are concerned the Respondent's alleged targeting of the Complainant is not supported by evidence. The Complaint rather than placing in evidence a copy of the webpage it relies upon, sought to describe it, but in any event its description of that page is of a generic PPC page without any evidence of any specific targeting. The Panel considers that in circumstances where a domain name has been legitimately acquired for its generic properties, linking that domain name to a parking page which automatically generates links to third party websites based on the generic properties of the domain name does not amount to bad faith use absent any specific targeting of the Complainant. The Complaint describes the Respondent's website as showing advertisements related to "Zydus Pharma", "India Pharma" and "Job Vacancies". If the Panel is correct that these are algorithmically generated links, and the page was accessed in India (as seems likely) the Panel is not particularly surprised it returned links which may relate to the Complainant. While the presence of "click through" links may in appropriate cases form a basis to show targeting, in the specific circumstances of this case, and in particular without additional supporting evidence of targeting, the facts as described in the Complaint do not in the Panel's opinion establish that the Respondent was deliberately targeting the Complainant. The Panel therefore concludes that in this case even if the Disputed Domain Name was used in the manner described by the Complainant that does not support any finding of bad faith.

Accordingly the Complainant has failed to establish that the third condition of paragraph 4(a) of the Policy has been fulfilled.

7. Reverse Domain Name Hijacking

Reverse Domain Name Hijacking ("RDNH") is defined under the Rules as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name".

Paragraph 15(e) of the Rules provides that, if "after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

As set out in the [WIPO Overview 3.0](#) section 4.16, reasons articulated by panels for finding RDNH include: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant's lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith (such as registration of the disputed domain name well before the complainant acquired trademark rights, (ii) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database, (iii) unreasonably ignoring established Policy precedent notably as captured in this WIPO Overview – except in limited circumstances which *prima facie* justify advancing an alternative legal argument, (iv) the provision of false evidence, or otherwise attempting to mislead the panel, (v) the provision of intentionally incomplete material evidence – often clarified by the respondent, (vi) the complainant's failure to disclose that a case is a UDRP refiling, (vii) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis, (viii) basing a complaint on only the barest of allegations without any supporting evidence".

The Complainant is professionally represented in this matter and, in the opinion of the Panel, knew or ought to have known that it had no reasonable chance of prevailing in this proceeding for the reasons set out above. In particular the Complainant has in large measure ignored the key issue – the fact that the Respondent acquired the Disputed Domain Name in 2004. The Complaint has instead simply produced voluminous evidence directed at events after that date. Further the Complaint contains statements which are, at least on the evidence as filed, inaccurate – specifically that the Complainant's predecessor had in some way adopted the term Zydus from 1952 and that the Complainant owned a US trademark registration

for the term ZYDUS prior to the date the Disputed Domain Name was registered. The Panel also accept the Respondent's case that it is more likely than not that the numerous unsolicited offers to buy the Disputed Domain Name received by the Respondent in early 2022 were made on behalf of the Complainant. These offers were undisclosed by the Complainant in the Complaint and would appear to indicate the Complainant knew it did not have prior rights that would allow it to recover the Disputed Domain Name. At the very least the Complainant should have disclosed it had made these offers and explained why it had done so given the nature of the case it advanced in the Complaint.

The Panel is also of the view that the sheer volume of material produced by the Complainant, without a proper referencing to indicate the key parts of this material, tended to obfuscate matters in a manner the Panel found unhelpful.

Taking all of the above into account the Panel considers it appropriate to find that the Complainant was brought in bad faith and constitutes an abuse of the administrative proceeding.

8. Decision

For the foregoing reasons, the Complaint is denied. The Panel finds that the Complainant was brought in bad faith and constitutes an abuse of the administrative proceeding.

/Nick J. Gardner/
Nick J. Gardner
Presiding Panelist

/Pablo A. Palazzi/
Pablo A. Palazzi
Panelist

/Alan L. Limbury/
Alan L. Limbury
Panelist
Date: June 24, 2022