

## **ADMINISTRATIVE PANEL DECISION**

Teva Pharmaceutical Industries Ltd. v. Privacy service provided by  
Withheld for Privacy ehf / Lula Ayala  
Case No. D2022-1765

### **1. The Parties**

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

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Lula Ayala, Canada.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 16, 2022. On May 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 17, 2022, 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 and contact information in the Complaint. The Center sent an email communication to Complainant on May 18, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on May 19, 2022.

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 Respondent of the Complaint, and the proceedings commenced on May 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 9, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 10, 2022.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on June 20, 2022. 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

Complainant is the owner of registration for the word trademark TEVA on the register of the Canadian Intellectual Property Office (“CIPO”), registration number TMA 411063, registration dated April 16, 1993, in international classes (“ICs”) 3, 5 and 6, covering pharmaceutical preparations, pharmaceutical products and chemical sanitary substances, as further specified. Complainant is owner of registration of the stylized word trademark TEVA on the Principal Register of the United States Patent and Trademark Office (“USPTO”), registration number 2353386, registration dated November May 30, 2000, in IC 5, covering, *inter alia*, pharmaceutical preparations. Complainant is owner of registration of the word and device trademark TEVA as an International Trademark under the Madrid System, registration number 1319184, registration dated June 15, 2016, with over 50 country designations. Complainant also is owner of registration for the figurative word trademark TEVA on the register of the European Union Intellectual Property Office (“EUIPO”), registration number 000115394, registration dated April 29, 1998, in IC 5, covering, *inter alia*, pharmaceutical preparations and consulting services in the field of pharmaceuticals. Complainant has provided evidence of ownership of additional TEVA trademark registrations in various countries.

Complainant is a multinational pharmaceutical company supplying the largest volume of generic pharmaceutical products worldwide, as well as developing and supplying originator products. Complainant operates in more than 60 countries and employs more than 37,000 individuals. Complainant operates a commercial website at <tevacanada.com>, among other domain addresses.

According to the Registrar’s verification, Respondent is registrant of the disputed domain name. According to a Whois Search report provided by Complainant, the record of registration of the disputed domain name was created on April 25, 2022. There is no evidence on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its creation date.

Respondent has directed the disputed domain name to the Canada-specific website of Complainant at <tevacanada.com>. An Internet user is not advised or made aware of the redirection from Respondent to Complainant. Complainant has provided evidence that Respondent has created an MX record associated with the disputed domain name.<sup>1</sup>

The registration agreement between Respondent and the Registrar subjects Respondent to dispute settlement under the Policy. The Policy requires that domain name registrants submit to a mandatory administrative proceeding conducted by an approved dispute resolution service provider, one of which is the Center, regarding allegations of abusive domain name registration and use (Policy, paragraph 4(a)).

#### 5. Parties’ Contentions

##### A. Complainant

Complainant alleges that it owns rights in the trademark TEVA and that the disputed domain name is confusingly similar to that trademark.

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<sup>1</sup> According to Wikipedia, “MX record”: “A mail exchanger record (MX record) specifies the mail server responsible for accepting email messages on behalf of a domain name. It is a resource record in the Domain Name System (DNS). It is possible to configure several MX records, typically pointing to an array of mail servers for load balancing and redundancy.” [https://en.wikipedia.org/wiki/MX\\_record](https://en.wikipedia.org/wiki/MX_record), Panel visit of July 1, 2022.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Respondent is not a licensee of Complainant and has not otherwise received permission to use its trademark in the disputed domain name; (2) Respondent has not been commonly known by the disputed domain name; (3) a Google search of the disputed domain name (with and without its generic Top-Level Domain (“gTLD”)) returns results relating to Complainant; (4) Respondent does not own trademark rights in the disputed domain name (with and without its gTLD); (5) there is no evidence that Respondent has used or is planning to use the disputed domain name for a *bona fide* offering of goods or services, and; (6) Complainant cannot conceive of any possible situation in which use of the disputed domain name by Respondent would not infringe its trademark rights.

Complainant argues that Respondent registered and is using the disputed domain name in bad faith because: (1) Complainant’s trademark was registered long before Respondent registered the disputed domain name; (2) a simple search in an online trademark register or in the Google search engine would have informed Respondent of Complainant’s rights in its trademark; (3) redirecting the disputed domain name to the website of Complainant trademark owner creates a real or implied threat to Complainant; (4) mere registration of a third party trademark in a disputed domain name creates a presumption of bad faith; (5) creation of an MX record by Respondent indicates that Respondent intends to use the disputed domain name in an email address, and such an email address would be likely to confuse email recipients regarding the identity of the sender; (6) use by Respondent of a privacy shield may under the circumstances evidence bad faith; (7) in light of the well-known character of Complainant’s trademark, use of it by a party without affiliation to Complainant evidences opportunistic bad faith.

## **B. Respondent**

Respondent did not reply to Complainant’s contentions.

## **6. Discussion and Findings**

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery of the Complaint to Respondent was successfully completed. There is no indication of difficulties in the transmission to Respondent of email. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

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

Complainant has provided substantial evidence of rights in the trademark TEVA, including by registration at the CIPO, the USPTO, the EUIPO, and as an International Trademark, and through use in commerce (see Factual Background *supra*). Complainant has not challenged Complainant's assertion of trademark rights. The Panel determines that Complainant owns rights in the trademark TEVA.

The disputed domain name <tevacanadaltd.com> directly and fully incorporates Complainant's TEVA trademark. The direct and full incorporation of Complainant's trademark by Respondent in the disputed domain name is sufficient to establish confusing similarity within the meaning of the Policy. The addition in the disputed domain name of the term "canada" and the business entity identifier "ltd" does not prevent a finding of confusing similarity. The Panel determines that the disputed domain name is confusingly similar to Complainant's TEVA trademark.

Complainant has established that it owns rights in the trademark TEVA and that the disputed domain name is confusingly similar to that trademark.

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

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above in section 5.A, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name.

Respondent has not replied to the Complaint, and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

Respondent's use of the disputed domain name to direct Internet users to Complainant's commercial website does not establish rights or legitimate interests in favor of Complainant. While it is not wrongful as such to direct or redirect a domain name to a third-party website, Respondent's use of the disputed domain name confusingly similar to Complainant's trademark implies that Respondent is in some manner affiliated or associated with Complainant, which it is not. Respondent has not replied to the Complaint, and the Panel will not speculate regarding whether there might be some plausible good faith reason for Respondent to use the disputed domain name in this way. Respondent's use of the disputed domain name does not constitute a *bona fide* offering of goods or services or a fair use of the disputed domain name or Complainant's trademark.

Respondent's use of the disputed domain name does not otherwise manifest rights or legitimate interests.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain name.

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

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states 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". These include, "(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location".

Complainant's TEVA trademark was well established in Canada and internationally when Respondent registered the disputed domain name. It is implausible that Respondent registered the disputed domain name, a semantically unique formulation combining Complainant's trademark and a geographic territory where Complainant does business under the same name, without being aware of Complainant and its trademark.<sup>2</sup> There is little reason to doubt that Respondent was specifically targeting Complainant and its trademark when it registered the disputed domain name.

Respondent has not replied to the Complaint. Respondent has not attempted to refute Complainant's allegations of bad faith registration and use. Absent some plausible explanation by Respondent which - as Complainant has suggested - may be a remote possibility, the Panel is prepared to draw the likely inference, which is that Respondent registered the disputed domain name with the intention to confuse Internet users regarding the affiliation of the disputed domain name with Complainant for commercial gain. There are bad faith reasons why Respondent might want to do that. Notably, if the disputed domain name is used to create a deceptive email address - and Respondent has created an MX record - Respondent might then give that email address greater "credence" by using the disputed domain name in the body of a deceptive email where it would direct to Complainant's commercial website. That would appear to establish an affiliation with Complainant, even though none exists. As this Panel has previously noted, the proliferation of phishing schemes and fraudulent activity based on use of deceptive email addresses is a sufficiently serious problem that acting to prevent such activity has taken on heightened importance. Once a "target" has been defrauded based on a deceptive email address, it is difficult to redress. It remains for domain name registrants, including Respondent in this case, to justify registration of a domain name incorporating a trademark of a third party and directing it to that third party's website. The Panel does not say that such justification is "inconceivable", but the case needs to be made. It has not been made here. Moreover, panels have found that a respondent redirecting a domain name to a complainant's website can establish bad faith insofar as respondent retains control over the redirection thus creating a real or implied ongoing threat to complainant. See section 3.1.4 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel determines that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the Policy by intentionally for commercial gain creating Internet user confusion regarding affiliation between Respondent and Complainant's online location by incorporating Complainant's trademark in Respondent's disputed domain name and redirecting that disputed domain name to Complainant's website.

## 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, <tevacanadald.com>, be transferred to Complainant.

*/Frederick M. Abbott/*

**Frederick M. Abbott**

Sole Panelist

Date: July 1, 2022

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<sup>2</sup> See Teva Canada website at <https://www.tevacanada.com/en/canada/>. Panel visit of July 1, 2022.