

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical USA, Inc v. Firat Dicle, Hilal Altin, Almila Yagmur, and Imren Kaskarov

Case No. D2022-3609

1. The Parties

Complainant is Teva Pharmaceutical USA, Inc, United States of America (“United States”), represented by SILKA AB, Sweden.

Respondents are Firat Dicle, Hilal Altin, Almila Yagmur, and Imren Kaskarov, Türkiye.

2. The Domain Names and Registrar

The disputed domain names <abjerni.com>, <abjerny.com>, <abtayva.com> and <relveev.com> are registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 29, 2022. On September 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 30, 2022, the Registrar transmitted by email to the Center its verification response confirming that Respondents are listed as the registrants and providing the contact details.

The Center verified that 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 Respondents of the Complaint, and the proceedings commenced on October 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2022. Respondents did not submit any response. Accordingly, the Center notified Respondents’ default on October 25, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on November 1, 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 a company organized under the laws of the United States that is active in the pharmaceutical industry.

Complainant has provided evidence that it is, *inter alia*, the registered owner of various European Union trademarks, namely:

- word mark ABJERNI, European Union Intellectual Property Office (“EUIPO”), registration number: 018665673, registration date: June 28, 2022, status: active;
- word mark ABJERNY, EUIPO, registration number: 018665666, registration date: June 28, 2022, status: active;
- word mark ABTAYVA, EUIPO, registration number: 018665670, registration date: June 28, 2022, status: active;
- word mark RELVEEV, EUIPO, registration number: 018665633, registration date: June 28, 2022, status: active.

Moreover, Complainant has demonstrated to be the applicant of the following pending United States trademark applications, which have been filed shortly before the registration of the disputed domain names:

- word mark ABJERNI, United States Patent and Trademark Office (“USPTO”), serial number: 97247936, filing date: February 1, 2022;
- word mark ABJERNY, USPTO, serial number: 97239398, filing date: January 26, 2022;
- word mark ABTAYVA, USPTO, serial number: 97239487, filing date: January 26, 2022;
- word mark RELVEEV, USPTO, serial number: 97239392, filing date: January 26, 2022.

Respondents, according to the Whois information for the disputed domain names, all are residents of Türkiye and registered the disputed domain names as follows: <abjerni.com> on February 4, 2022, and <abjerny.com>, <abtayva.com> and <relveev.com> on January 29, 2022, all of which direct to the same GoDaddy website for Domain Broker Service.

Complainant requests that the disputed domain names be transferred to Complainant.

5. Parties’ Contentions

A. Complainant

Complainant submits that all of the aforementioned registered and applied-for trademarks relate to several future drugs currently under development by Complainant and/or the Teva Pharmaceutical group of companies, the world’s largest generic medicines producer in 2018, to which Complainant belongs.

Complainant contends that the disputed domain names are at least confusingly similar to Complainant’s trademarks, as they solely comprise the latter, with the Top-Level Domain (“TLD”) “.com” being disregarded for purposes of consideration of confusing similarity. Moreover, Complainant asserts that Respondents have no rights or legitimate interests in respect of the disputed domain names since: (1) Complainant has not authorized any of Respondents to use its trademarks for any reason or in any manner, including in or as part of domain names, and Complainant is not affiliated or otherwise connected with Respondents whatsoever, (2) Complainant has not found any evidence that Respondents are commonly known by the disputed domain

names or that they own any trademark registrations relating to the disputed domain names, and the terms reflected in the disputed domain names do not have any meaning in the English language, and (3) all disputed domain names are at least implicitly offered for online sale and – given that they solely comprise Complainant’s trademarks (without meaning in the English language) – the disputed domain names carry a high risk of false affiliation with Complainant and its activities. Finally, Complainant argues that Respondents have registered and are using the disputed domain names in bad faith since: (1) all disputed domain names were registered only three days after the filing of Complainant’s various United States trademark applications, indicating that Respondents were aware of Complainant and its trademarks when the disputed domain names were registered, (2) considering that the disputed domain name comprise Complainant’s trademarks in full and that none of the said terms reflected therein have a meaning in the English language, it is impossible to believe that Respondents would have chosen the disputed domain names if they did not have Complainant’s trademarks and activities in mind, and (3) there is no realistic construction to place on Respondents’ behavior other than that they registered the disputed domain names with a view to selling them either to Complainant or to a competitor of it, exploiting or otherwise capitalizing on Complainant’s trademarks or nascent rights in such trademarks, and preventing Complainant from reflecting its trademarks in the corresponding domain names.

B. Respondents

Respondents did not reply to Complainant’s contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondents’ default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondents do not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondents’ failure to submit a Response as it considers appropriate.

A. Consolidation of Multiple Respondents and Disputed Domain Names

As regards the consolidation of multiple Respondents and disputed domain names, it should first be noted that Respondents share various common Whois contact information (e.g., they are all located in Türkiye, using all the same email extension <@aesthetixgear.com>, and Respondents Firat Dicle and Hilal Altin having the same telephone number while Respondents Almila Yagmur and Imren Kaskarov also having the same telephone number). Second, it should be recognized that all four disputed domain names belonging to these Respondents each reproduce one of Complainant’s trademarks, have been registered through the same Registrar as well as in a direct temporal link to – namely only three days after – the filing of the corresponding pending application of Complainant’s United States trademarks. Third, all four disputed domain names resolve to the same GoDaddy website for Domain Broker Service.

Therefore, it is reasonable to argue that the disputed domain names are more likely than not subject to common control which is why it is also fair and equitable to all Parties in this Complaint that it is consolidated against multiple Respondents and disputed domain names at the same time (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.2).

B. Identical or Confusingly Similar

The Panel concludes that the disputed domain names are identical to the trademarks ABJERNI, ABJERNY, ABTAYVA and RELVEEV, in which Complainant has registered rights, at least in relation to the territory of the European Union. The disputed domain names exclusively incorporate those trademarks, with the applicable TLD “.com”, viewed as a standard registration requirement, and as such, being disregarded under the identity or confusing similarity test (see [WIPO Overview 3.0](#), section 1.11.1).

Therefore, Complainant has established the first element under the Policy set forth by paragraph 4(a)(i).

C. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant’s undisputed contentions that Respondents have not made use of the disputed domain names in connection with a *bona fide* offering of goods or services, nor have Respondents been commonly known by the disputed domain names, nor can it be found that Respondents have made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondents have not been authorized to use Complainant’s ABJERNI, ABJERNY, ABTAYVA and/or RELVEEV trademarks, either as a domain name or in any other way. Also, there is no reason to believe that Respondents’ names somehow correspond with the disputed domain names and Respondents do not appear to have any trademark rights associated with the fanciful terms “Abjerni”, “Abjerny”, “Abtayva” and/or “Relveev” on their own. Finally, Respondents so far have neither used the disputed domain names for a *bona fide* offering of goods or services nor for a legitimate noncommercial or fair purpose, but rather to direct them to the same GoDaddy website for Domain Broker Service, which is why at least implicitly through such website – Respondents appear to have the intention to offer the disputed domain names for online sale. Given that the disputed domain names incorporate all four of Complainant’s newly registered trademarks in their entirety, they carry as such a high risk of implied affiliation with Complainant, which cannot constitute fair use, and thus, cannot confer rights or legitimate interests on Respondents in the disputed domain names (see [WIPO Overview 3.0](#), section 2.5.1).

Accordingly, Complainant has established a *prima facie* case that Respondents have no rights or legitimate interests in respect of the disputed domain names. Having done so, the burden of production shifts to Respondents to come forward with appropriate evidence demonstrating such rights or legitimate interests (see [WIPO Overview 3.0](#), section 2.1). Given that Respondents have defaulted, they have not met that burden.

Therefore, the Panel finds that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

D. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain names were registered and are being used by Respondents in bad faith.

The circumstances to this case – especially the direct temporal link of the registration of the four disputed domain names to the filing of the still pending applications of Complainant’s United States trademarks which are identically reproduced in those four disputed domain names – leave no doubts that Respondents were fully aware of Complainant’s nascent rights in the ABJERNI, ABJERNY, ABTAYVA and RELVEEV trademarks when registering the disputed domain names (see [WIPO Overview 3.0](#), section 3.8.2) and that the latter clearly are directed thereto. The Panel also recognizes that Complainant’s ABJERNI, ABJERNY, ABTAYVA and RELVEEV trademarks are highly distinctive and further agrees with Complainant’s line of argumentation that given such timely coincidence between the application of Complainant’s United States trademarks and the registration of the disputed domain names each only three days later, it is rather likely that Respondents had installed some kind of trademark watch to be able to register, as quickly as possible,

the disputed domain names directly relating to Complainant's applied-for trademarks. Against this very background, offering the disputed domain names at least implicitly through the GoDaddy website for online sale is a clear indication that Respondents registered the disputed domain names primarily for the purpose of selling them to Complainant, most likely in considerable excess of the documented out-of-pocket costs directly related to those disputed domain names. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(i) of the Policy.

In this context, it also carries weight in the eyes of the Panel that Respondents obviously provided false or incomplete contact information in the Whois database for the disputed domain names since, according to the delivery reports of the courier service, the Written Notice dated October 4, 2022 could not be delivered to them. This fact at least throws a light on Respondents' behavior which supports the Panel's bad faith finding.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy set forth by paragraph 4(a)(iii).

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 names <abjerni.com>, <abjerny.com>, <abtayva.com> and <relveev.com> be transferred to Complainant.

/Stephanie G. Hartung/

Stephanie G. Hartung

Sole Panelist

Date: November 15, 2022