

## **ADMINISTRATIVE PANEL DECISION**

Teva Pharmaceutical Industries Limited v. Goran Gichevski  
Case No. D2022-4220

### **1. The Parties**

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

The Respondent is Goran Gichevski, Bulgaria.

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

The disputed domain name <azilectstoreonline.com> is registered with Stork R, informacijske storitve, d.o.o. (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 7, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 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 (WHOIS Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 10, 2022, 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 15, 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 the Respondent of the Complaint, and the proceedings commenced on November 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 6, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on December 21, 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**

The Complainant is a pharmaceutical company operating in sixty countries worldwide, and the world's largest generic medicines producer.

The Complainant (also through its wholly owned subsidiaries) is the owner of the registered trademark AZILECT in numerous of countries including its International Trademark Registration No. 810121 registered for "Pharmaceutical products for the treatment of Parkinson's disease and other diseases of the central nervous system" in class 5 ICGS on September 10, 2003, which covers Bulgaria, the apparent domicile of the Respondent, and the European Union Trade Mark with Registration No. 003092541 registered for the same goods on December 20, 2004.

The Complainant has registered domain names containing the term "azilect", such as <azilect.com> (created on October 20, 2003), and <azilect.eu> (created on April 16, 2006).

The disputed domain name was registered on February 09, 2022. The disputed domain name resolves to a website that claims to offer for sale Azilect and competing products ("Buy Azilect online genuine brand name and alternative equivalent generic medications today at discount!").

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

##### **A. Complainant**

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its AZILEC trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

According to paragraphs 14(a) and 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable, and on the basis of the Complaint where no Response has been submitted.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

(i) the disputed domain name is identical or confusingly similar to the trademarks or service marks 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 bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("[WIPO Overview 3.0](#)") and, where appropriate, will decide consistent with the consensus views captured therein.

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

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant is the owner of AZILECT trademark, which has been first registered and used long ago.

The disputed domain name incorporates the Complainant's AZILECT trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *FMC Corporation v. Петров Юри́й Олегович (Petrov Yuriy Olegovich)*, WIPO Case No. [D2021-2423](#)).

Here, the addition of the words "store" and "online" in the disputed domain name does not, in view of the Panel, prevent a finding of confusing similarity between the disputed domain name and the Complainant's AZILECT trademark.

Therefore, Panel finds that the disputed domain name is confusingly similar to the Complainant's AZILECT trademark. As stated at section 1.8 of the [WIPO Overview 3.0](#), where a trademark is recognizable within a disputed domain name, the addition of other terms would not prevent a finding of confusing similarity.

In view of the above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

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

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of "proving a negative", in particular as the evidence needed to show the Respondent's rights or legitimate interests is often primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy.

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly that the Respondent has no authorization to use the Complainant's AZILECT trademark in a confusingly similar way within the disputed domain name. The Complainant has never assigned, granted, licensed, sold, transferred, or in any way authorized the Respondent to register or use the trademark AZILECT and domain names containing the Complainant's trademark in any manner.

The Panel also found that by using the disputed domain name in connection with a website that falsely appears to be a website associated with the Complainant by including the Complainant's trademark and pictures of AZILEC products, the Respondent has failed to create a *bona fide* offering of goods or services.

According to the consensus view in UDRP panel decisions (see section 2.8 of the [WIPO Overview 3.0](#)), a reseller or distributor can be making a *bona fide* offering of goods and services and thus have a legitimate interest in the domain name if its use meets certain requirements. These requirements normally include the actual offering of goods and services at issue, the use of the site to sell only the trademarked goods or services, and the site's accurate and prominent disclosure of the registrant's relationship with the trademark holder. The respondent must also not try to "corner the market" in domain names that reflect the trademark. Many panels subscribing to this view have also found that not only authorized but also unauthorized resellers may fall within such so-called *Oki Data* principles (e.g., *Dr. Ing. h.c. F. Porsche AG v. Del Fabbro Laurent*, WIPO Case No. [D2004-0481](#)).

Having carefully inspected the website under the disputed domain name, the Panel, however, has not found signs that prevent confusion with the Complainant. There is no clear statement on the corresponding website that it is not the trademark owner, even if it offers legitimate goods – which is not clear, by accurately disclosing the registrant's relationship with the trademark owner. Since the Respondent's website does not include any statement clearly setting out the relationship between the Complainant and the Respondent, this aspect of the *Oki Data* test does not assist the Respondent here. The Panel moreover notes the claim on the website to sell "alternative equivalent generic medications" which would be competing products; while it may be acceptable to sell such competing products, using the Complainant's trademark in the disputed domain name to do so is not permitted.

The Respondent had the opportunity to demonstrate rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the *prima facie* case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy (paragraph 4(a)(ii) of the Policy).

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

According to paragraph 4(a)(iii) of the Policy, the Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to a 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 website or location or of a product or service on the website or location.

In the present case, the Panel finds it inconceivable that the Respondent was unaware of the Complainant and its rights in the AZILECT mark when it registered the disputed domain name.

Furthermore, the Panel is also of the opinion that no explanation may be reasonably submitted to understand why the Respondent selected the disputed domain name other than to mislead Internet users and create a likelihood of confusion with the Complainant. The combination of the word "store" and "online" with the Complainant's mark AZILEC into the disputed domain name constitutes additional proof of the above finding.

Consequently, it is established by the Panel that the Respondent registered the disputed domain name in bad faith.

The disputed domain name resolves to a website called “Azilect Store Online” that claims to offer for sale AZILECT products, and even competing generic products. The website linked to the disputed domain name includes copies of the Complainant’s trademark and reproduces images of the Complainant’s products. As a result, the Respondent must have had knowledge of the Complainant’s rights at the time of registering the disputed domain name. The Panel finds that the Respondent’s awareness of the Complainant’s trademark rights at the time of registration suggests bad faith, and that the actions of the Respondent in attempting to sell prescription drugs can result in the public being misled as to the accuracy of the information provided or the origin, sponsorship, or association of the products offered or sold on the Respondent’s website, are use in bad faith.

Finally, by failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) 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, <azilectstoreonline.com>, be transferred to the Complainant.

*/Ganna Prokhorova/*

**Ganna Prokhorova**

Sole Panelist

Date: December 23, 2022