

## **ADMINISTRATIVE PANEL DECISION**

Teva Pharmaceutical Industries Ltd. v. 王化德 (Huade Wang aka Hua De Wang)

Case No. D2022-5038

### **1. The Parties**

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

The Respondent is 王化德 (Huade Wang aka Hua De Wang), China.

### **2. The Domain Names and Registrars**

The disputed domain names <mytevaenefitguide.com>, <mytevaenefitguide.com>, and <tevaenefitguide.com> are registered with West263 International Limited; and the disputed domain names <tevaenefitguide.com> and <tevaenefitguide.com> are registered with Dynadot, LLC (the “Registrars”).

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 30, 2022. On January 3, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On January 4, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Not Disclosed / Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 6, 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 in English on January 10, 2023.

On January 6, 2023, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant confirmed its request that English be the language of the proceeding on January 10, 2023. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on January 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 3, 2023.

The Center appointed Sok Ling MOI as the sole panelist in this matter on February 9, 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, established in 1935, is a global pharmaceutical company that delivers patient-centric healthcare solutions and medicines, including respiratory products and painkiller products. In 2017, the Complainant produced approximately 120 billion tablets and capsules at dozens of manufacturing facilities worldwide. Currently, the Complainant employs more than 30,000 employees and boasts of more than USD 15 billion in worldwide sales for the year 2020.

The Complainant owns a global portfolio of trade mark registrations for TEVA and TEVA-formative marks, including the following:

- International Trade Mark Registration No. 1319184, for TEVA (stylised, colour) in Classes 5, 10 and 42, registered on June 15, 2016;
- German Trade Mark Registration No. 1187976, for TEVA (stylised) in Class 5, registered on June 17, 1993;
- European Union Trade Mark Registration No. 000115394, for TEVA (stylised) in Class 5, registered on April 29, 1998;
- United States of America Trade Mark Registration No. 1567918, for TEVA (stylised) in Class 5, registered on November 28, 1989;
- Israeli Trade Mark Registration No. 41075, for TEVA (word mark) in Class 5, registered on July 5, 1977;
- Canadian Trade Mark Registration No. TMA411063, for TEVA (word mark) in Classes 3, 5 and 10, registered on April 16, 1993;
- European Union Trade Mark Registration No. 001192830, for TEVA (word mark) in Classes 3, 5 and 10, registered on July 18, 2000.

The Complainant establishes its online presence under the domain name <mytevaenefitsguide.com> (registered on September 4, 2018), which hosts a website that displays information about the Complainant and its benefits program.

The disputed domain names <tevabenifitguide.com>, <mytevaenefitguide.com> and <mytevaenefitguide.com> were registered on November 17, 2022 while the disputed domain names <tevabenefitguide.com> and <tevabenifitguide.com> were registered on December 7, 2022. According to the evidence submitted by the Complainant, each of the disputed domain names resolves to a parking webpage featuring sponsored links to third party websites related to human resources and employee benefits.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to its TEVA trade mark, the Respondent has no rights or legitimate interests in respect of the disputed domain names, and that the disputed domain names have been registered and are being used in bad faith.

The Complainant requests for the transfer of the disputed domain names.

### B. Respondent

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

## 6. Discussion and Findings

### 6.1 Procedural Issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due expedition and that the Parties are treated equitably and given a fair opportunity to present their respective cases.

The language of the Registration Agreement for the disputed domain names <mytevabenefitguide.com>, <mytevabenfitsguide.com>, and <tevabenifitsguide.com> is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding. The Respondent did not respond on the issue of the language of the proceeding.

The Panel finds sufficient evidence in the present proceeding to suggest that the Respondent has knowledge of English. In particular, the Panel notes that:

- (a) the disputed domain names <mytevabenefitguide.com>, <mytevabenfitsguide.com>, and <tevabenifitsguide.com> are registered in Latin characters, rather than Chinese scripts;
- (b) the disputed domain names incorporate the English word "my", "benefit" or "guide";
- (c) the websites to which the disputed domain names <mytevabenefitguide.com>, <mytevabenfitsguide.com>, and <tevabenifitsguide.com> resolves contain pay-per-click ("PPC") links containing English words, such as "Employee Benefit", "Employee Health Insurance Benefit" and "Insurance Texas"; and
- (d) the language of the Registration Agreements for the disputed domain names <tevabenefitguide.com> and <tevabenfitsguide.com> is English.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent of the proceeding in both English and Chinese;
- (b) the Respondent has been given the opportunity to respond on the issue of the language of the proceeding, but did not do so; and

(c) the Center has informed the Respondent that it would accept a Response in either English or Chinese, but the Respondent did not file a Response.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to all Parties and is not prejudicial to any of the Parties in their ability to articulate the arguments for this case. The Panel has taken into consideration the fact that to require the Complaint to be translated into Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.

In view of all the above, the Panel determines under paragraph 11(a) of the Rules that it shall accept the Complaint and all supporting materials as filed in English, that English shall be the language of the proceeding, and that the decision will be rendered in English.

## **6.2 Substantive Issue: Findings on the Three Elements**

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following three elements to obtain an order for the disputed domain name to be cancelled or transferred:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

On the basis of the arguments and evidence introduced by the Complainant, the Panel concludes as follows:

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

The Panel accepts that the Complainant has rights in the TEVA trade mark by virtue of use and registration. There is no specific requirement under the Policy to have a trade mark registration in the jurisdiction where the Respondent is based, namely China.

The disputed domain names incorporate the Complainant's TEVA trade mark in its entirety. Neither the addition of the word "benefit" or its various misspellings nor the English words "my" and "guide" prevents a finding of confusing similarity between the disputed domain names and the Complainant's TEVA trade mark which is clearly recognizable. The addition of the generic Top-Level Domain ("gTLD") ".com" is a standard registration requirement and is generally disregarded for the purpose of the confusing similarity assessment. Further, each of the disputed domain names is an obvious typographical variant or misspelling of the Complainant's domain name <myteva**benefits**guide.com>.

Consequently, the Panel finds that the disputed domain names are confusingly similar to the Complainant's TEVA trade mark.

Accordingly, the Complainant has satisfied the requirements of the first element under paragraph 4(a) of the Policy.

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

Under paragraph 4(a)(ii) of the Policy, a complainant bears the burden of establishing that the respondent lacks rights or legitimate interests in the disputed domain name. However, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to establish its rights or legitimate interests in the disputed domain name by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed 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 it has acquired no trade mark 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 trade mark or service mark at issue.

See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. honghao Internet foshan co, ltd*, WIPO Case No. [D2013-0974](#).

The Complainant has confirmed that the Respondent is not in any way affiliated with the Complainant or otherwise authorized or licensed to use the TEVA trade mark or to seek registration of any domain name incorporating the TEVA trade mark. The Respondent appears to be an individual by the name of “王化德 (Huade Wang aka Hua De Wang)”. There is no evidence suggesting that the Respondent is commonly known by the disputed domain names or that the Respondent has any rights in the term “Teva”.

According to the evidence submitted by the Complainant, each of the disputed domain names resolves to a parking webpage featuring sponsored links to third party websites related to human resources and employee benefits. Presumably, the Respondent receives PPC fees from the linked websites. UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users. See section 2.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The Panel is satisfied that the Complainant has made out a *prima facie* case showing that the Respondent lacks rights or legitimate interests in the disputed domain names. The burden of production thus shifts to the Respondent to establish rights or legitimate interests in the disputed domain names. Since the Respondent did not file a response to the Complaint and has thus failed to offer any explanation for the registration of the disputed domain names, the *prima facie* case has not been rebutted.

Consequently, the Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain names.

Accordingly, the Complainant has satisfied the requirements of the second element under paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

- (i) circumstances indicating that the respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) the respondent has registered the disputed domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed 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.

The Respondent has registered a number of domain names which are obvious typographical variants and misspelled versions of the Complainant's domain name <mytevabenefitsguide.com>. Clearly, the Respondent was aware of and specifically targeting the Complainant when he registered the disputed domain names. Previous UDRP panels have found that mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark (particularly domain names comprising typos) by an unaffiliated entity creates a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#). The Panel also finds that the circumstances referred to in paragraph 4(b)(ii) of the Policy are applicable to the present case.

The consensus view of previous UDRP panels is that a domain name registrant is normally deemed responsible for content appearing on a website at its domain name, even if such registrant may not be exercising direct control over such content - for example, in the case of advertising links appearing on an "automatically" generated basis. The Panel notes the presumption that the Respondent or a third party stands to profit or make a "commercial gain" from advertising revenue by such an arrangement trading on third-party trade marks. In the Panel's opinion, such links clearly seek to capitalize on the trade mark value of the Complainant's TEVA trade mark. The Panel therefore determines that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his websites by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the Respondent's websites, and the Panel finds that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case.

Taking into account all the circumstances, the Panel is satisfied that the Respondent's registration and use of the disputed domain names is in bad faith.

Accordingly, the Complainant has satisfied the requirements of the third element under paragraph 4(a) 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 names, <mytevaenefitguide.com>, <mytevabenefitsguide.com>, <tevaenefitguide.com>, <tevabenefitsguide.com>, and <tevabenefitsguide.com>, be transferred to the Complainant.

*/Sok Ling MOI/*

**Sok Ling MOI**

Sole Panelist

Date: March 24, 2023