

ADMINISTRATIVE PANEL DECISION

Gilead Sciences, Inc. v. fei na
Case No. D2023-0301

1. The Parties

Complainant is Gilead Sciences, Inc., United States of America (“United States”), represented internally.

Respondent is fei na, American Samoa, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 23, 2023. On January 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 24, 2023, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on January 25, 2023, 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 January 25, 2023.

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 January 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 16, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on February 17, 2023.

The Center appointed Jeffrey D. Steinhardt as sole panelist in this matter on February 24, 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

Complainant is a United States biopharmaceutical company founded in 1987 that focuses on researching and developing antiviral drugs. Complainant owns numerous trademarks worldwide including for example GILEAD SCIENCES, registered September 4, 1990 as United States Trademark No. 1611838 in International Class 5, with a first use in commerce date of April 4, 1988.

The disputed domain name was registered August 7, 2022 and currently resolves to a webpage indicating that the webpage has been suspended pending registrant verification of Whois details.

5. Parties' Contentions

A. Complainant

Complainant provides extensive information about its products and its history.

Complainant alleges that Respondent's registration of the disputed domain name is for the purpose of "wrongfully diverting traffic for Respondent's own commercial gain and scam, which is bad faith, not a legitimate use of the Domain". Complainant also avers that Respondent registered three domain names incorporating Complainant's trademarks without making legitimate use of them.¹

Summarizing its legal contentions, Complainant alleges that (1) the disputed domain name is identical or confusingly similar to Complainant's trademarks, (2) Respondent has no rights or legitimate interests in the disputed domain name, and (3) the disputed domain name was registered and is being used in bad faith, all in violation of the Policy. On this basis, Complainant seeks transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

The Rules require the Panel to decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable. Rules, paragraph 15(a). Complainant must establish each element of paragraph 4(a) of the Policy, namely:

- (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.

Complainant must establish these elements even if Respondent does not submit a response. See, e.g., *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#); WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3. In the absence of a Response, the Panel may also accept as true the reasonable factual allegations in the Complaint. See, e.g.,

¹Only one name is considered in this proceeding since there is no evidence submitted respecting the other two domain names.

ThyssenKrupp USA, Inc. v. Richard Giardini, WIPO Case No. [D2001-1425](#) (citing *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#)).

A. Identical or Confusingly Similar

The Panel agrees with Complainant's allegation that the disputed domain name is identical to Complainant's GILEAD SCIENCES mark.

UDRP panels commonly disregard Top-Level Domains ("TLDs") in determining whether a disputed domain name is identical or similar to a complainant's marks. [WIPO Overview 3.0](#), section 1.11.1.

Omitting the ".shop" TLD from the disputed domain name, the Panel notes that the disputed domain name is exactly the same as Complainant's GILEAD SCIENCES mark, therefore the disputed domain name is identical for purposes of paragraph 4(a)(i) of the Policy.

The Panel therefore concludes that the first element of paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

The Panel also concludes that Respondent has no rights or legitimate interests in the disputed domain name.

The Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in a domain name. The list includes: (1) using the domain name in connection with a *bona fide* offering of goods and services; (2) being commonly known by the domain name; or (3) making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers. Policy, paragraphs 4(c)(i) – (iii).

A complainant must show a *prima facie* case that a respondent lacks rights or legitimate interests in a disputed domain name, after which the burden of production passes to the respondent. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#). The absence of rights or legitimate interests is established if a complainant makes out a *prima facie* case and the respondent enters no response. *Id.*, (citing *De Agostini S.p.A. v. Marco Cialone*, WIPO Case No. [DTV2002-0005](#)).

Complainant alleges that Respondent is not affiliated with Complainant and has no rights or legitimate interests in the disputed domain name. The Panel accepts the allegations that Respondent has no relevant trademark rights, authorization or license to use Complainant's trademark in the disputed domain name.

Complainant also avers that the disputed domain name on January 23, 2023 resolved to an "unverified, suspended website."²

Although Complainant does not expressly address the questions, the Panel finds that (1) Respondent is not commonly known by the disputed domain name, and (2) that there is no *bona fide* use since the disputed domain name resolves to an inactive webpage.

In light of the available evidence, the Panel holds that Respondent is not making a legitimate or fair use of the disputed domain name and that a *prima facie* case is established. Omitting to submit a response, Respondent has neither contested nor rebutted that *prima facie* case.

The Panel holds, therefore, that Respondent has no rights or legitimate interests in use of the disputed domain name and that the second element of the Policy is established.

² Complainant's Annex 4 omits the referenced screenshot. However archives available to the Panel show screen images consistent with Complainant's description.

C. Registered and Used in Bad Faith

The Panel finds that the third element of paragraph 4(a) of the Policy, bad faith registration and bad faith use, is also established, as elaborated below.

Respondent registered the <gileadsciences.shop> domain name incorporating Complainant's inherently distinctive mark, which has been in widespread use for many years. It appears beyond dispute that Respondent knew of Complainant's GILEAD SCIENCES marks and sought to exploit them and create consumer confusion through registration of the identical disputed domain name. The Panel holds therefore that Respondent registered the disputed domain name in bad faith. *E.g.*, [WIPO Overview 3.0](#), sections 3.2.1 and 3.3.

UDRP panels may draw inferences about bad faith in light of the circumstances, including passive holding, failure to respond to a complaint and other circumstances. *E.g.*, *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#) Sections 3.2.1.

The record shows that Respondent: (1) is passively holding the disputed domain name; (2) failed to maintain accurate contact details as required by Respondent's agreement with the Registrar; and (3) failed to respond to these proceedings. Based on this evidence, the Panel finds that Respondent, having registered the disputed domain name in bad faith, is also using the disputed domain name in bad faith.³

Accordingly, the Panel concludes that paragraph 4(a)(iii) of the Policy is satisfied.

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 <gileadsciences.shop> be transferred to Complainant.

/Jeffrey D. Steinhardt/
Jeffrey D. Steinhardt
Sole Panelist
Date: March 10, 2023

³ In its bad faith allegations, Complainant notes that Respondent registered two other domain names incorporating Complainant's trademarks. As previously noted, the record contains no evidence respecting these registrations, therefore the Panel cannot consider the other two registrations. The Panel is aware that in a separate UDRP proceeding brought by another complainant, the panel recently ordered transfer against Respondent. *SODEXO v. fei na*, WIPO Case No. D2022-3281. In the Panel's view, this single order of transfer falls short of supporting a ruling that Respondent engaged in a pattern of domain name registration evidencing bad faith under paragraph 4(b)(ii) of the Policy. See *e.g.*, [WIPO Overview 3.0](#), section 3.1.2.