

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Limited v. Goran Gichevski Case No. D2023-1096

1. The Parties

- 1.1 The Complainant is Teva Pharmaceutical Industries Limited, Israel, represented by SILKA AB, Sweden.
- 1.2 The Respondent is Goran Gichevski, Bulgaria.

2. The Domain Name and Registrar

- 2.1 The disputed domain name <copaxonepharmacyonline.com> (the “Domain Name”) is registered with Stork Registry Inc. (the “Registrar”).

3. Procedural History

- 3.1 The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 13, 2023. At that time the underlying registration details for the Domain Name had been replaced on the publicly available WhoIs database by the words “WhoIs Masked”.
- 3.2 On March 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 15, 2023, the Registrar transmitted by email to the Center its verification response disclosing the underlying registrant and contact information for the Domain Name. The Center sent an email communication to the Complainant on March 17, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint.
- 3.3 The Complainant filed an amendment to the Complaint on March 17, 2023, seeking to amend its original Complaint to reflect the disclosed registration details and making observations as to the Respondent’s previous involvement in UDRP proceedings.
- 3.4 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”).

- 3.5 In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on March 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 12, 2023.
- 3.6 The Center appointed Matthew S. Harris as the sole panelist in this matter on April 21, 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

- 4.1 The Complainant is a global pharmaceutical company which was established in 1935. In 2017 it produced approximately 120 billion tablets and capsules at dozens of manufacturing facilities worldwide. In 2018, it was the world's largest generic medicines producer. It is active in over 60 countries and employs approximately 42,000 people around the world.
- 4.2 Pharmaceutical products sold by the Complainant, include a prescription medicine for treatment of relapsing forms of multiple sclerosis, sold under the name "Copaxone". This medicine has been available in the United States since 1996, and in the European Union since 2001.
- 4.3 The Complainant is the owner of numerous registered trade marks around the world that comprise or include the term "Copaxone". They include the following registrations of COPAXONE as a word mark:
- (i) European Union registered trade mark registration n^o 002183986 registered on June 17, 2002, in class 5.
 - (ii) United States of America trade mark registration n^o 1816603 registered on January 18, 1994, in class 5.
 - (iii) Icelandic trade mark registration no V0024042, registered on June 29, 1995, in class 5.
 - (iv) Canadian trade mark registration no TMA483793 registered on October 8, 1997, in class 5.
 - (v) Australian trade mark registration no 592141 registered on June 3, 1994, in class 5.
 - (vi) Brazilian trade mark registration no 817027777 registered on June 7, 1994, in class 5.
- 4.4 The Complainant is the owner of the domain name <copaxone.com> registered on February 28, 1997, which hosts a website that displays information about the Complainant and its products.
- 4.5 The Domain Name was registered on February 9, 2022. It has been used since registration to display a website that operates under the name "Copaxone Pharmacy Online". The home page of that website features pictures of the packaging for the Complainant's COPAXONE product and displays in large text the words "Buy Copaxone Online". Under those words in smaller text is the statement "Buy online genuine brand name and alternative equivalent generic Copaxone medications today at discount", under which is displayed, what appears to be, a United States telephone number and an interactive text box in which are displayed the words "Search for Products".

4.6 At the bottom of that home page is the following text:

“We at Copaxone Pharmacy Online have been helping clients to locate and buy Copaxone brand names and generic alternatives and to save money on their orders for over 20 years and counting. We are confident once you order Copaxone with us, you will save money and be satisfied and become another one of our long-term and loyal customers.”

4.7 According to the Whois details provided by the Registrar the Respondent would appear to be an individual located in Bulgaria. The Respondent has previously been the losing party in the following previous UDRP proceedings:

- *Sanofi and Sanofi-Aventis Deutschland GmbH v. Goran Gichevski*, WIPO Case No. [D2022-4018](#)
- *Ferring B.V. v. Domain Admin / Goran Gichevski*, WIPO Case No. [D2022-2008](#)
- *Teva Pharmaceutical Industries Limited v. Goran Gichevski*, WIPO Case No. [D2022-4220](#)

4.8 Each of these decisions involved the Respondent registering domain names incorporating trade marks for pharmaceuticals. In the first and third of these cases the domain name was used in connection with a website that appears to have been very similar in form to the website operating from the Domain Name. In the second of these cases, the domain names appear to have been passively held. In all of these cases the registrar was the Registrar.

4.9 The website in respect of which the Domain Name has been used, continues in operation as at the date of this decision.

5. Parties' Contentions

A. Complainant

5.1 The Complainant refers to its business and marks. It contends that its trade mark is clearly recognisable in the Domain Name and the additional words in the Domain Name do not prevent a finding of confusing similarity.

5.2 The Complainant contends that the Domain Name is being used in connection with a website that falsely appears to be a website associated with the Complainant, by including “the Complainant’s logo; photos of pharmacists and prescription drug products; and text that says the Respondent ‘is a supplier of various brands of medications and health products’”. It also claims there is text in the website that is said to offer “prescription medications, especially for pain management, without the need to ask your doctor for a prescription”. The Complaint also exhibits screenshots from the website operating from the Domain Name. These screenshots do not really evidence many of the Complainant’s allegations as to the content of the website, although they do show that the Domain Name is being used for a website that appears to be offering for sale the Complainant’s products as described in greater detail in the Factual Background section of this decision.

5.3 The Complainant also alleges that:

“The fact that the Respondent obtained the Domain Name years after the Complainant had begun using its COPAXONE mark indicates the Respondent sought to piggyback on the COPAXONE for illegitimate reasons possibly to sell counterfeit drugs, or at least purports to offer prescription pharmaceuticals without the need for said prescriptions.”

5.4 These activities are claimed by the Complainant not to involve a *bona fide* offering of goods or services and are said to demonstrate that the Domain Name was registered and used in bad faith.

- 5.5 The Complainant also relies upon the Respondents involvement in previous UDRP cases, which are said to demonstrate that the Respondent has targeted other pharmaceutical companies and to support its case when it comes to bad faith registration and use.

B. Respondent

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

6. Discussion and Findings

- 6.1 There are no exceptional circumstances within paragraph 5(f) of the Rules so as to prevent this Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to lodge a formal Response.
- 6.2 It is incumbent on the Complainant to make out its case in all respects set out in paragraph 4(a) of the Policy. Namely, the Complainant must prove that:
- (i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights (paragraph 4(a)(i)); and
 - (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name (paragraph 4(a)(ii)); and
 - (iii) the Domain Name has been registered and is being used in bad faith (paragraph 4(a)(iii)).
- 6.3 However, under paragraph 14(b) of the Rules, where a party does not comply with any provision of the Rules, the Panel shall "draw such inferences therefrom as it considers appropriate".

A. Identical or Confusingly Similar

- 6.4 The Complainant has satisfied the Panel that it has registered trade mark rights in the term "copaxone" in a number of jurisdictions including the European Union and the United States. In order to demonstrate the first element of the Policy, it is usually sufficient for a complainant to show that the relevant mark is "recognizable within the disputed domain name" (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").
- 6.5 The Domain Name can only be sensibly understood as the term "copaxone" combined with the words "pharmacy" and "online", and the ".com" Top-Level Domain. The Complainant's mark is, therefore, clearly recognisable in the Domain Name. The Panel also agrees with the Complainant that the addition of the words "pharmacy" and "online" in the domain name does not prevent a finding of confusion similarity.
- 6.6 The Complainant has, therefore, demonstrated that the Domain Name is confusingly similar to a trade mark or service mark in which the Complainant has rights and has, thereby, made out the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests and Registered and Used in Bad Faith

- 6.7 It is usual for panels under the Policy to consider the issues of rights or legitimate interests, and registration and use in bad faith, in turn. However, in a case such as this it is more convenient to consider those issues together (as to which see section 2.15 of the [WIPO Overview 3.0](#)).

- 6.8 The Complainant essentially contends that the Domain Names have been registered and held for the purpose of falsely impersonating the Complainant, in order to sell of counterfeit goods. So far as the allegation of sale of counterfeit goods is concerned, the registration and use of a domain name for such a purpose does not provide a right or legitimate interest and such activity is likely to demonstrate bad faith (see sections 2.13.1 and 3.1.4 of the [WIPO Overview 3.0](#)).
- 6.9 The Complainant's assertions here may well be correct. This is a serious allegation and were it not correct, one would have expected the Respondent to say so. However, this is merely an assertion on the part of the Complainant. As is recorded in section 2.13.1 of the [WIPO Overview 3.0](#), usually something more (and it often it need not be much more) is required.
- 6.10 The Panel has similar observations in relation to the allegation that the Respondent is acting unlawfully in providing prescription products without a prescription. Once again the Complainant's allegations in this respect appear to be mere assertion. The Panel would have preferred the Complainant to provide evidence from the website that the products are being offered on that basis, to identify the markets to which the products were being provided and to assert and preferably evidence that in those markets the products can only be sold on a prescription basis (as to which see the reference to the provision of "evidence" in section 2.13.2 of the [WIPO Overview 3.0](#)).
- 6.11 However, in this particular case none of this ultimately matters. The Panel accepts that the Domain Name is likely to be inherently deceptive in that it comprises the Complainant's mark and words that are more likely to indicate that the Domain Name is sponsored or operated by the Complainant rather than a third party (as to which see paragraph 2.5.1 of [WIPO Overview 3.0](#)). That was also the conclusion of the panel in *Sanofi and Sanofi-Aventis Deutschland GmbH v. Goran Gichevski*, WIPO Case No. [D2022-4018](#) and although slightly different English words were used in connection with the relevant trade mark in that case, the Panel does not consider those differences to be material.
- 6.12 Further, the Panel accepts that the website operating from the Domain Name is likely to be understood by Internet users as sponsored or operated by the Complainant. It prominently uses the Complainant's mark and does not in any of the material supplied to the discloses in any form, let alone prominently, that the website is operated by a third party. The Panel accepts that when these factors are considered in combination, this is a case where the Respondent has impersonated the Complainant. There is no right or legitimate interest in such impersonation and registering and using a domain name for such a purpose is bad faith registration and use.
- 6.13 In any event, and even if the website were offering genuine goods for sale, the failure to accurately and prominently disclose that the Respondent is not connected with the Complainant means that the Respondent has failed to comply with the "Oki Data" principles that are a prerequisite for the existence of a right or legitimate interest (see section 2.8 of the [WIPO Overview 3.0](#)). The reference on the website to "alternative equivalent generic Copaxone medications" and, at the bottom of the website, "generic alternatives" would also suggest that the website is being used to at least some degree to promote non-Copaxone branded medications. That also would fail to comply with the "Oki Data" principles. The Panel notes that this appears to have been a significant part of the reasoning of the panel in *Teva Pharmaceutical Industries Limited v. Goran Gichevski* WIPO Case No. [D2022-4220](#), which involved a similar if not identical website operated by the Respondent in respect of another branded pharmaceutical of the Complainant.
- 6.14 The Panel is also satisfied that the Complainant's activities fall within the scope of the example of circumstances evidencing bad faith registration and use set out in paragraph 4(b)(iv) of the Policy.
- 6.15 In the circumstances, the Complainant has made out the requirements of paragraph 4(a)(ii) and 4(a)(iii) of the Policy.

7. Decision

- 7.1 For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <copaxonepharmacyonline.com> be transferred to the Complainant.

/Matthew S. Harris/

Matthew S. Harris

Sole Panelist

Date: May 4, 2023