

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Ltd. v. Felix Rimele
Case No. D2023-2766

1. The Parties

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

The Respondent is Felix Rimele, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <tevapharm.tech> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 29, 2023. On June 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 3, 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 on July 11, 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 the Respondent of the Complaint, and the proceedings commenced on July 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2023. An informal communication was submitted by the Respondent on July 3, 2023.

The Center appointed Torsten Bettinger as the sole panelist in this matter on August 10, 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 is one of the world's largest producers of generic medicines. It is the proprietor of numerous registrations for its TEVA trademark, including the following:

- Israeli Trademark Registration No. 41075 TEVA (word mark), registered on July 5, 1977, in international class 5.
- European Union Trademark Registration No. 018285645 TEVAPHARM (word mark), registered on January 9, 2021, in international classes 5 and 44.
- International Trademark Registration No. 1319184, TEVA + Design, registered on June 15, 2016, in international classes 5, 10 and 42;
- European Union Trademark Registration No. 000115394, TEVA + Design, registered on April 29, 1998, in international class 5;
- United States Trademark Registration No. 2353386 TEVA + Design, registered on May 30, 2000, in international class 5.

The Complainant operates its primary business website at the domain name <tevapharm.com> and has registered a significant number of domain names including <tevapharma.com>.

The disputed domain name was registered on June 25, 2023, and does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant submits that its TEVA mark is a distinctive term used in the healthcare sector and has been used by the Complainant exclusively since 1935.

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant asserts that:

- the disputed domain name is identical or confusingly similar to trademark TEVA and TEVAPHARMA as the disputed domain name reproduces the Complainant's trademark in its entirety and is recognizable within the disputed domain name;
- the addition of the generic Top-Level-Domain ("gTLD") ".tech" is not significant in determining whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

With regards to the Respondent having no rights or legitimate interests in the disputed domain name, the Complainant submitted that:

- the Complainant has not authorized the Respondent to use its TEVA and TEVAPHARM marks for any reason or in any manner, including in or as part of a domain name;
- the Complainant is not affiliated or otherwise connected with the Respondent;
- the Complainant has found no evidence that the Respondent has been commonly known by the disputed domain name or by the term "tevapharm";
- Google searches of TEVA and TEVAPHARM show how the suggested results are related to the Complainant and its activities, which proves that the disputed domain name would give Internet users the impression that it is another domain name under which the Complainant operates its online presence;

- the Complainant has found nothing to suggest that the Respondent holds any trademark rights in the term “tevapharm”;
- the disputed domain name does not resolve to an active website, but has been used to send emails to users offering job interviews with the Complainant for customer service positions and that emails were sent under the name of the Complainant’s Principal Recruitment Manager;
- it is highly unlikely that the Respondent intended to use the disputed domain name for any legitimate or fair use;
- no situation is conceivable in which the use of the disputed domain name would not infringe the Complainant’s rights in the TEVA and TEVAPHARM trademarks.

Finally, with regards to the disputed domain name having been registered and being used in bad faith, the Complainant argues that:

- the disputed domain name reproduces in full the Complainant’s TEVA and TEVAPHARM marks, without the consent or authorization of the Complainant;
- a simple search in an online trademark register or in the Google search engine would have informed the Respondent on the existence of the Complainant and its rights in TEVA and TEVAPHARM;
- considering that the disputed domain name comprises the Complainant’s TEVA and TEVAPHARM marks in full, Internet users commonly will associate the disputed domain name with the Complainant and its activities and it is impossible to believe that the Respondent would have chosen the disputed domain name if it did not have the Complainant’s marks and activities in mind;
- having regard to the common association of the disputed domain name and the term “tevapharm” with the Complainant it is impossible to think of any good faith use to which the disputed domain name could be put by the Respondent;
- MX servers are configured in the disputed domain name, which indicates a risk that the Respondent potentially uses the disputed domain name to create an email address, with the suffix “@tevapharm.tech” for deceiving purposes,
- the disputed domain name has been used to set up a fraudulent scheme by sending emails in which the Respondent identified himself as “ Principal Recruitment Manager at TEVA PHARMACEUTICAL”, and offered job interviews with the Complainant for customer service positions;
- the Respondent is using a privacy registration service to conceal its identity, which is an additional indication for a finding of bad faith registration and use;
- in view of all the above, the Complainant contends that the Respondent’s passive holding of the disputed domain name has the characteristics which are associated with bad faith registration and use.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions. The Center received an email from the Respondent on July 3, 2023, stating: “I would like to amend. Why is my domain suspended without any reason. It's say it available before I purchase”.

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following elements:

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

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns multiple trademark registrations for the mark TEVA prior to the registration of the disputed domain name on April 27, 2023.

It is well-established that the test of identity or confusing similarity under the Policy is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the trademark is used or other marketing and use factors usually considered in trademark infringement cases. (See sections 1.1.2 and 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

In this case, the disputed domain name is identical with the Complainant’s TEVAPHARM trademark and contains the Complainant’s TEVA trademark in its entirety. As set forth in section 1.7 of the [WIPO Overview 3.0](#): “in cases where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark.” (See, e.g., *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“the fact that a domain name wholly incorporates a complainant’s registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy”).

Finally, it is well accepted in past UDRP decisions that the gTLD, such as (e.g., “.com”, “.club”, “.nyc”, “.tech” etc.), is typically not to be taken into account when assessing the issue of identity and confusing similarity, except in certain cases where the applicable gTLD may itself form part of the relevant trademark (see section 1.11 of the [WIPO Overview 3.0](#)). This practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to “new gTLDs”).

The Panel therefore concludes that the disputed domain name is identical with the Complainant’s TEVAPHARM trademark and confusingly similar to the Complainant’s TEVA trademark in which the Complainant has exclusive rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish its rights or legitimate interests in the domain name, among other circumstances, by showing any of the following elements:

- “(i) before any notice to you [the Respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) you [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [the Respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant stated that the Respondent is not a licensee, authorized agent of the Complainant or in any other way authorized to register the disputed domain name and provided evidence that the disputed domain name was used to set up a fraudulent scheme by sending emails in which the Respondent identified himself as “ Principal Recruitment Manager at TEVA PHARMACEUTICAL”, offering job interviews with the Complainant for customer service positions.

These assertions and evidence are sufficient to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent chose not to contest the Complainant’s allegations and has failed to come forward with any evidence to refute the Complainant’s *prima facie* showing that the Respondent lacks rights or legitimate interests. The Panel therefore accepts these allegations as undisputed facts.

From the record in this case, the disputed domain name does not resolve to an active website, and there is no other evidence to support the assumption that the Respondent has used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

The Panel therefore concludes that the Respondent lacks rights and legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of 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 trademark 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 its 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 Complainant holds multiple trademark registrations for the TEVA and TEVAPHARMA trademarks in various jurisdictions that predate the registration of the disputed domain name.

Given that the Complainant’s TEVA and TEVAPHARMA marks are widely known in many countries worldwide, it is likely that the Respondent did not coincidentally register the disputed domain name but had

knowledge of the Complainant's rights in the TEVA and TEVAPHARMA marks when registering the disputed domain name.

The fact that there is no evidence that the disputed domain name has not yet been actively used does not prevent a finding of bad faith use.

Although the circumstances listed in paragraph 4(b) are all phrased in terms of affirmative actions by the Respondent, it is by now well accepted that the passive holding of a domain name, in certain circumstances, can constitute bad faith use under the Policy. (See, e.g., *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); see also [WIPO Overview 3.0](#), section 3.3.)

While panels will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include:

- (i) the degree of distinctiveness or reputation of the complainant's mark;
- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; and
- (iii) the implausibility of any good faith use to which the domain name may be put.

The circumstances of the present case are sufficiently similar to those present in *Telstra* to establish bad faith passive holding of the disputed domain name.

Based on the record in this proceeding, the Panel is satisfied that the Complainant's TEVA mark is distinctive and widely-known.

Given that the Complainant's TEVA and TEVAPHARMA marks are solely connected with the Complainant and do not have any generic or descriptive meaning, the disputed domain name is also not susceptible to be used in a good faith generic or descriptive sense.

In addition, noting that the disputed domain name has active MX (Mail exchange) records, and that the Complainant provided evidence that shows that the disputed domain name was used to send emails to users in which the Respondent identified himself as "Principal Recruitment Manager at TEVA PHARMACEUTICAL", offering job interviews with the Complainant for customer service positions, the Panel accepts the Complainant's contention that the disputed domain name was used in fraudulent email or phishing communication.

Furthermore, the Respondent has not replied to the Complaint nor provided any evidence of actual or contemplated good faith use of the disputed domain name.

The Panel therefore finds that the circumstances, as described above, show that the Respondent registration and passive holding of the disputed domain name equals a bad faith registration and use of the disputed domain name and therefore the Complainant also established the third element 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 <tevapharm.tech> be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: August 24, 2023