

## **ADMINISTRATIVE PANEL DECISION**

Gilead Sciences, Inc. v. Gilberta M Iorg  
Case No. D2023-3518

### **1. The Parties**

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

The Respondent is Gilberta M Iorg, United States.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 18, 2023. On August 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 21, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 22, 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 August 22, 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 August 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2023.

On August 31, 2023, the Respondent sent an email communication to the Center. A possible settlement email was sent on September 6, 2023, and a formal reminder on September 13, 2023. The Complainant requested suspension of the administrative proceeding on September 13, 2023. The Center suspended the administrative proceeding on September 13, 2023, until October 13, 2023. The center sent an email communication to the parties on October 17, 2023. The proceeding was reinstated on November 1, 2023.

The Center appointed Kathryn Lee as the sole panelist in this matter on November 20, 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 a biopharmaceutical company founded in 1987. It develops, manufactures, and offers for sale pharmaceutical products which prevent and treat HIV infection and products which cure hepatitis C, and some of its medications are on the World Health Organization's List of Essential Medicines. The Complainant is headquartered in California and has offices and affiliate companies in 35 countries with around 14,500 employees worldwide. The Complainant's total revenues were approximately USD 27.3 billion in 2022, and in the same year, it was listed as number 129 in the Fortune 500 Company rankings. The Complainant owns more than 120 trademark registrations for the GILEAD mark around the world, including United States Trademark Registration Number 3,251,595 registered on June 12, 2007, Singaporean Trademark Registration Number T08/03446D registered on July 24, 2008, Indian Trademark Registration Number 2363685 registered on September 10, 2015, and European Trademark Registration number 3913167 registered on November 7, 2005.

The Respondent appears to be an individual with an address in the United States.

The disputed domain name was registered on January 30, 2023, and does not resolve to any active website.

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

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

The Complainant contends that the disputed domain name is confusingly similar to the GILEAD trademark in which the Complainant has rights. Specifically, the Complainant contends that the disputed domain name contains the famous GILEAD mark in its entirety, which is sufficient to support a finding that the disputed domain name is confusingly similar to the Complainant's mark. Further, the Complainant contends that the addition of the generic term "affiliate" to the disputed domain name only adds to the confusion because the term implies that the disputed domain name is owned by a business, licensee, or entity closely associated with the Complainant.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant contends that given the fame of the GILEAD mark, the Respondent knew of, or at least had constructive knowledge of, the GILEAD mark. The Complainant also contends that the Respondent's registration of the disputed domain name despite knowing of the Complainant and its rights to the GILEAD mark shows that the Respondent registered the disputed domain name in order to divert Internet users. The Complainant also asserts that the Respondent's use of a privacy service to hide her identity is further evidence of the Respondent's bad faith.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. However, in the email to the Center on August 31, 2023, the Respondent mainly stated: .

"I just received your dhl.com delivery. Totally confused at to me having a domain. My name is Gilberta, grew up as gilly. I have 2 emails and one is [...]@gmail.com. Always loved that name, matches my name, so I thought I would name an email after it. Now as far as a domain, I don't have one. I remember years ago I tried to learn about an online business that had affiliate after it, and I gave it gilead..."

6. Discussion and Findings

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

The Complainant has demonstrated with supporting evidence that it has rights to the trademark GILEAD. As for the disputed domain name, it consists of GILEAD with the term "affiliate". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, a domain name is considered confusingly similar to a trademark if it "incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name". In this regard, the Complainant's mark is readily recognizable within the disputed domain name, and the term "affiliate" does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8). Therefore, the disputed domain name is confusingly similar to the Complainant's trademark.

For the reasons mentioned above, the Panel finds that the first element has been established.

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

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a prima facie case showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a prima facie case has been established, the burden of production shifts to the Respondent to demonstrate its rights or legitimate interests in the disputed domain name, with the burden of proof always remaining with the Complainant. However, the Respondent in this case has chosen to file no substantive Response and has not rebutted these assertions by the Complainant, and there is no evidence or allegation in the record that would warrant a finding in favor of the Respondent on this point.

It is unclear whether the Respondent claims to be the owner of the disputed domain name or not. However, the Respondent indicates that it grew up as "Gilly" and that "gilead" matches that name. The Respondent provided an email address containing the term "gilead". However, the Panel does not find any evidence, and none was provided by the Respondent, demonstrating rights or legitimate interests as to the Respondent being commonly known by the term "gilead" or by the disputed domain name.

Further, a respondent's use of a domain name is not considered "fair" if it falsely suggests affiliation with the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1. Here, the dominant element of the disputed domain name corresponds exactly to the Complainant's trademark, and the additional term "affiliate" implies that the disputed domain name belongs to an entity with some sort of a relationship with the Complainant, and therefore, carries a risk of implied affiliation.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

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

The Panel finds that there is sufficient evidence to find bad faith in this case.

Section 3.1 of the [WIPO Overview 3.0](#) provides that bad faith under the UDRP is "broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark". Here, the

Respondent more likely than not knew of the Complainant when registering the disputed domain name. For one, information on the Complainant and its trademark would have been easily discoverable through an Internet search. Further, it is difficult to think of a reason for the Respondent to register the disputed domain name which consists of only the GILEAD mark with the term "affiliate" if not to imply that the owner of the disputed domain name has a business relationship with the Complainant. Therefore, the Panel finds that the Respondent more likely than not registered the disputed domain name with knowledge of the Complainant and its trademark in order to profit from the likelihood of association with the Complainant's trademark and the products using the mark.

The disputed domain name does not display any content and there is no evidence that it has ever been used, but from the inception of the UDRP, UDRP panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See [WIPO Overview 3.0](#), section 3.3. Considering the distinctiveness of the GILEAD mark, the Respondent's failure to submit a response or provide any evidence of actual or contemplated good-faith use, and the implausibility of any good faith use to which the confusingly similar disputed domain name could be put, the Panel finds that the Respondent's non-use of the disputed domain name does not prevent a finding of bad faith.

For the reasons given above, the Panel finds that the third element has been established.

## **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, <gileadaffiliate.com> be transferred to the Complainant.

*/Kathryn Lee/*

**Kathryn Lee**

Sole Panelist

Date: December 6, 2023