

## **ADMINISTRATIVE PANEL DECISION**

Teva Pharmaceutical Industries Ltd. v. Marco Cardenas  
Case No. D2023-4952

### **1. The Parties**

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

The Respondent is Marco Cardenas, United States of America (“United States”).

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

The disputed domain name <tevaphamaticalcareer.com> is registered with Squarespace Domains LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 28, 2023. On November 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 4, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 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 on December 7, 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 December 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 4, 2024.

The Center appointed Linda Chang as the sole panelist in this matter on January 22, 2024. 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 pharmaceutical company established in 1935, and active in over 60 countries with more than 37,000 employees internationally.

The Complainant is the owner of the following, amongst other, TEVA trademark registrations:

- i) United States Trademark Registration No. 1567918, registered on November 28, 1989, in Class 5;
- ii) United States Trademark Registration No. 2353386, registered on May 30, 2000, in Class 5;
- iii) Canada Trademark Registration No. TMA411063, registered on April 16, 1993, in Classes 3, 5 and 10.

The disputed domain name was registered on October 18, 2023. Presently it does not resolve to an active webpage but at the time of filing of the Complaint, it resolved to a webpage stating that “We’re under construction. Please check back for an update soon”.

#### **5. Parties’ Contentions**

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- i) the disputed domain name incorporates the entirety of the TEVA trademark and is confusingly similar to the TEVA trademark;
- ii) the Complainant has not authorized the Respondent to use the TEVA trademark for any reason or in any manner including in or as part of the disputed domain name;
- iii) the Respondent has not been commonly known by the disputed domain name or by the term “tevaphamaticalcareer”;
- iv) the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate, noncommercial or fair use of the disputed domain name;
- v) the Respondent had the Complainant and its TEVA trademark in mind at the time of registration of the disputed domain name; and
- vi) the disputed domain name does not resolve to an active website and such non-use would not prevent a finding of bad faith under the doctrine of passive holding.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between

the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds that the Complainant has shown rights in respect of the TEVA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel further finds that the entirety of the TEVA trademark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the TEVA trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms "phamatical" and "career" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Panel considers that the record of this case reflects that:

- before any notice of the dispute, the Respondent was not using the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services;
- the Respondent has not been commonly known by the disputed domain name; and
- no other factors demonstrate rights or legitimate interests of the Respondent in the disputed domain name.

Having considered all the circumstances, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent registered the disputed domain name that fully incorporates the Complainant's TEVA trademark, plus the addition of the terms "phamatical" and "career".

The typo “phamatical” is clearly making reference to the term “pharmaceutical”, the field of activity in which the Complainant operates. With that in mind, the Panel determines that the Respondent was aware of the Complainant’s rights to TEVA at the time of registration of the disputed domain name, and bad faith is found.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. Presently the disputed domain name does not resolve to an active webpage while it used to resolve to a webpage stating that “We’re under construction. Please check back for an update soon”.

Although panelists 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 respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. In the current case, the Panel notes the reputation of the Complainant’s trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case, such non-use of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has 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 <tevaphamaticalcareer.com> be transferred to the Complainant.

*/Linda Chang/*

**Linda Chang**

Sole Panelist

Date: February 6, 2024