

ADMINISTRATIVE PANEL DECISION

Teva Pharmaceutical Industries Ltd v. Yuran
Case No. DCO2024-0074

1. The Parties

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

The Respondent is Yuran, China.

2. The Domain Name and Registrar

The disputed domain name <cinqair.co> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 2, 2024. On October 7, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 7, 2024, 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 October 8, 2024, 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 October 9, 2024.

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 October 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 31, 2024.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on November 5, 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 an internationally active and widely known pharmaceutical company based in Israel. It was established in 1901 and is recognized as a leading company among the generic drug manufacturers. It has over 50 manufacturing facilities and has approximately 37,000 employees around the world. The Complainant commercializes under the mark CINQAIR a prescription medicine for the treatment of severe asthma.

The Complainant owns inter alia the following registrations:

- Israeli trademark registration for CINQAIR no. 251408 registered on July 6, 2014 in class 5
- United States of America (“United States”) trademark registration for CINQAIR no. 4718723 registered on April 14, 2015 in class 5
- United States trademark registration for CINQAIR no. 5124384 registered on January 17, 2017 in class 5.

The Complainant also owns other trademark registrations for CINQAIR through its subsidiary Cephalon LLC, such as an European Union trademark no. 011469533 registered on May 31, 2013 in class 5.

The Complainant and its subsidiaries also own domain name registrations for <cinqair.com>, <cinqair.org>, <cinqair.co.uk> and <cinqair.fr>.

The disputed domain name was registered on July 24, 2024.

The disputed domain name initially redirected to a dan.com parking page that stated “The domain name Cinqair.co is for sale!”. This page also indicated a price of USD 1,450 to buy the domain name. It was later reconfigured to land at a GoDaddy.com page with the same offer.

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 the disputed domain name is identical to its CINQAIR trademark.

With respect to the second element, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (i) the Respondent has not received any license or authorization from the Complainant to use any domain name featuring its mark; (ii) the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services; (iii) the Respondent is not commonly known by the disputed domain name or any variant thereof, and (iv) the Respondent is not making a legitimate or noncommercial fair use of the disputed domain name.

The Complainant submits also with respect to the second element inter alia that the nature of the disputed domain name, which incorporates the Complainant’s CINQAIR trademark in its entirety, coupled with the Respondent’s offer to sell the disputed domain name for an amount in excess of the Respondent’s out-of-pocket costs, supports the inference that the Respondent registered the disputed domain name in light of its value corresponding to the Complainant’s trademark. As such, the Respondent’s holding of the disputed domain name, ostensibly for purposes of resale, does not amount to a bona fide offering of goods or services. Furthermore, the Complainant contends that in light of the nature of the disputed domain name, incorporating the Complainant’s CINQAIR trademark in its entirety, the disputed domain name impersonates

the Complainant and carries a high risk of implied affiliation with the Complainant and the Respondent cannot plausibly make any fair use of the disputed domain name that would not tend to suggest affiliation with the Complainant.

With respect to the third element, the Complainant contends that the disputed domain name was registered in bad faith, given that its CINQAIR trademark is inherently distinctive and benefits a notable degree of international recognition throughout the world. The Complainant also contends that the disputed domain name was used in bad faith. The Respondent's offer to sell the disputed domain name for USD 1,450 supports the inference that the Respondent registered the Domain Name opportunistically, primarily for the purpose of selling it for valuable consideration in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name, in bad faith pursuant to paragraph 4(b)(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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 domain name; and
- (iii) the domain name registered by the respondent has been registered and is being used in bad faith.

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.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the CINQAIR mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is generally accepted that the applicable Top Level Domain ("TLD") in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1. In the present case, the TLD ".co" may be disregarded.

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.

Having reviewed the available record, the Panel finds that 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.

Indeed, based on the information submitted by the Complainant, the Complainant has not granted the Respondent authorization to use its trademarks within the disputed domain name. Moreover, there is no evidence indicating that the Respondent is commonly known by the disputed domain name. The Respondent has not demonstrated any use or preparations to use the disputed domain name in connection with a bone fide offering of goods or services, or any other right or interest to the disputed domain name.

Instead, based on the evidence provided by the Complainant, it appears that the Respondent has acquired the disputed domain name for the purpose of selling it likely in excess of its documented out-of-pocket costs directly related to the disputed domain name. In the Panel’s view, such behavior does not suggest any legitimate right or interest in the disputed domain name.

Furthermore, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner. [WIPO Overview 3.0](#), section 2.5.1. In the present case, the disputed domain name carries a risk of implied affiliation with the Complainant: the disputed domain name is identical to the Complainant’s trademark and, considered with the Top-Level domain “.co”, it differs only by one letter from the official domain name of the Complainant <cinqair.com>.

Finally, the Respondent did not file a Response to the Complaint. The Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b).

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.

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.

In the present case, the Panel notes that the disputed domain name was registered many years after the Complainant first registered and used its CINQAIR trademark. Given the distinctiveness of the Complainant’s trademark and the reputation of the Complainant, it is unlikely that the Respondent registered the disputed domain name without prior knowledge of the Complainant’s trademark and of its activities. Consequently, the Panel considers that the Respondent could not ignore the existence of the Complainant and of its trademark at the time of the registration of the disputed domain name, such that the disputed domain name was registered in bad faith.

Furthermore, the Complainant has demonstrated that the Respondent offered to sell the disputed domain name for the amount of USD 1,450. On the balance of probabilities, the Panel finds it likely that the Respondent has registered or acquired the disputed name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant or to a competitor of the Complainant, for valuable consideration likely in excess of his or her documented out-of-pocket costs directly related to the disputed domain name. According to paragraph 4(b)(i) of the Policy, such behavior constitutes use and registration in bad faith.

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 <cinqair.co> be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: November 19, 2024