

## **ADMINISTRATIVE PANEL DECISION**

**Gilead Sciences, Inc. v. Registration Private, Domains By Proxy, LLC /  
Carolina Rodrigues, Fundacion Comercio Electronico  
Case No. D2022-2199**

### **1. The Parties**

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

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

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

The disputed domain name <gileadadvancingaccess.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 16, 2022. On June 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 22, 2022 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 June 22, 2022.

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 June 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 4, 2022.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on August 9, 2022. 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, a corporation founded in 1987 in California, is one of the largest biopharmaceutical companies in the world. It discovers, develops, and commercializes innovative medicines in areas of unmet medical need, including pharmaceutical products which prevent and treat “Human Immunodeficiency Virus” and Covid-19 infections or which cure hepatitis C. Some of the Complainant’s medications have been placed on the World Health Organization’s List of Essential Medicines due to their nature as revolutionary treatments and cures of fatal diseases.

In 2021, the Complainant’s total worldwide revenue was approximately USD 27,3 billion, and its stock is part of the S&P 500 stocks index. The Complainant has about 14,500 employees worldwide and in 2022 is listed as No.129 in the Fortune 500 Companies rankings.

The Complainant owns exclusive rights to the GILEAD trademark, secured by a large portfolio of trademark registrations around the world and through ongoing use, including *inter alia* United States Trademark No. 3,251,595, registered on June 12, 2007 and European Union Trademark No. 003913167, registered on November 7, 2005, and to the ADVANCING ACCESS trademark, secured by United States Trademark No. 3,265,504, registered on July 17, 2007 (together hereinafter referred to as: “the Marks”).

The Complainant also owns the <gilead.com> domain name, registered on May 27, 1995, and many other domain names incorporating the element “gilead”, including <gileadadvancingaccess.com>.

The disputed domain name <gileadadvancingaccess.com> was created on May 20, 2022 and was initially registered in the name of a privacy service. The identity of the Respondent was disclosed by the Registrar in response to the Center’s request for registrar verification in connection with the disputed domain name.

The Complainant has submitted evidence that the disputed domain name resolved to a website displaying click-through links to sponsored websites. At the time of this decision, the disputed domain name still resolves to this website.

#### **5. Parties’ Contentions**

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

(i) The Complainant submits that the disputed domain name reproduces the Marks, in which the Complainant has rights, and is confusingly similar to the Marks, insofar as the disputed domain name is a combination of the GILEAD and ADVANCING ACCESS Marks, and the one letter missing in the element “advancingaccess” is not capable of dispelling the confusing similarity.

(ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends it never authorized the Respondent to use the Marks in any manner and that the Respondent is not commonly known by the GILEAD or ADVANCING ACCESS names and never had any affiliation with the Complainant.

(iii) The Complainant submits that the Respondent has registered the disputed domain name in bad faith and alleges that the Respondent had knowledge of the Marks when registering the disputed domain name.

(iv) The Complainant submits that the Respondent is using the disputed domain name in bad faith.

(v) The Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Procedural Aspects - Failure to Respond**

As aforementioned, no Response was received from the Respondent.

Under the Rules, paragraphs 5(f) and 14(a), the effect of a default by the Respondent is that, in the absence of exceptional circumstances, the Panel shall proceed to a decision on the basis of the Complaint.

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met, even in the event of a default.

Under paragraph 14(b) of the Rules, the Panel is empowered to draw such inferences from the Respondent's default as it considers appropriate under the circumstances.

In this case, the Panel finds that as a result of the default, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, by defaulting and failing to respond, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

### **6.2. Requirements of Paragraph 4(a) of the Policy**

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

In comparing the Marks with the disputed domain name, it is evident that the latter consists of the GILEAD and ADVANCING ACCESS Marks, with the letter "n" missing in the element "advancingaccess", and followed by the generic Top-Level Domain ("gTLD") ".com".

It is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity.

The Panel finds that the absence of the letter "n" in the element "advancingaccess" does not dispel the confusing similarity, and that the ADVANCING ACCESS Mark remains recognizable in the disputed domain name.

The Panel finds that the disputed domain name is confusingly similar to the Marks, which are incorporated in their entirety.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

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

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

As previously noted, the Respondent offered no reason for selecting the disputed domain name. There is no evidence that the Respondent is known by the disputed domain name. The way the Respondent has used the disputed domain name is not *bona fide* (see *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)). The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The disputed domain name resolves to a website displaying click-through links, showing a clear intent to obtain an unfair commercial gain, whilst misleadingly diverting Internet users and tarnishing the Marks.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name.

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

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

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name confusingly similar to the Marks, which can be considered as "cybersquatting".

First, the registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#).

Second, it is well established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, given that the Complainant has been targeted in over thirty UDRP proceedings where the concerned panel found in favor of the Complainant, publicly available on the Center's search engine, and that the GILEAD Mark is distinctive and well-known, as was recognized in a number of UDRP decisions (see for instance *Gilead Sciences, Inc. v. John Cuban, Gilead Online Pharmacy*, WIPO Case No. [D2020-1254](#) and *Gilead Sciences, Inc. v. Super Privacy Service LTD c/o Dynadot / Kolawole Feyisitan*, WIPO Case No. [D2020-3517](#)), and considering moreover that the disputed domain name resolves to a website displaying click-through links, the Panel finds that it is impossible to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the GILEAD Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#), citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *SembCorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#).

Also considering that at the date of registration of the disputed domain name, the ADVANCING ACCESS Mark was already registered and used for many years, the Panel finds it difficult to believe that the Respondent chose to register the disputed domain name with no knowledge of the ADVANCING ACCESS Mark.

Furthermore, considering the Respondent's use of the disputed domain name, the Panel concludes that the Respondent knew of the Marks when the Respondent registered the disputed domain name, and that such registration was made in bad faith.

The Panel finds that the Respondent has attempted to attract Internet users for commercial gain by creating a likelihood of confusion with the Marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, and that such use is constitutive of bad faith.

Third, prior UDRP panels have also held that bad faith use of a domain name by a respondent may also result from the fact its good faith use is in no way plausible, considering the specificity of the activity (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)). The Panel has been unable to determine any current or plausible future active use of the disputed domain name in good faith from the evidence before it, considering *inter alia* the specificity of the Complainant's activity and absence of any response from the Respondent.

Fourth, the Panel finds that the Respondent has engaged into a pattern of conduct, having been the subject of over 200 complaints under the Policy. The Panel has utilized the Center's decision search function, which is publicly available at the Center's website, and the vast majority of cases (perhaps all) resulted in findings of bad faith registration and use and transfer of the domain names at issue. The panel in one case labels the Respondent as "a serial cybersquatter" (see *The Chemours Company, LLC v. Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1659](#)).

Moreover, in this case, the Respondent took active steps to hide her identity. Although using a proxy or privacy service to hide the identity of the registrant is not *per se* conclusive of bad faith registration and use (see *Trinity Mirror Plc and MGN Ltd. v. Piranha Holdings*, WIPO Case No. [D2008-0004](#)), the Panel notes that the fact that the Respondent used a privacy service to hide her identity and contact details prevented the Complainant from contacting her. Prior UDRP panels have held that deliberate concealment of identity and contact information may in certain circumstances be indicative of registration in bad faith (see *TTT Moneycorp Limited v. Diverse Communications*, WIPO Case No. [D2001-0725](#), and *Schering Corporation v. Name Redacted*, WIPO Case No. [D2012-0729](#)). See section 3.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition.

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names have an affirmative duty to abstain from registering and using a domain name which is either identical or confusingly similar to a prior trademark held by others and that contravening that duty may constitute bad faith. See Policy, paragraph 2(b); *Nike, Inc. v. B. B. de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

## 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, <gileadadvancingaccess.com>, be transferred to the Complainant.

*/Louis-Bernard Buchman/*

**Louis-Bernard Buchman**

Sole Panelist

Date: August 10, 2022