

## **ADMINISTRATIVE PANEL DECISION**

Gilead Sciences, Inc. v. fei na  
Case No. D2023-1687

### **1. The Parties**

The Complainant is Gilead Sciences, Inc., United States of America, represented by Gilead Sciences, Inc., United States of America.

The Respondent is fei na, Samoa.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 17, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 April 19, 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 April 19, 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 April 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 17, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on May 24, 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, Gilead Sciences, Inc., is a research-based biopharmaceutical company founded in 1987, with headquarters in Forster City, California, United States of America. The Complainant discovers, develops and commercializes medicines in areas of unmet medical need.

The Complainant owns more than 120 registrations of the GILEAD trademark worldwide including, but not limited to, the following: GILEAD, United States of America Reg. No. 3,251,595, registered on June 12, 2007, for goods in class 5, and GILEAD SCIENCES, United States of America Reg No. 1,611,838, registered on September 4, 1990, also for goods in class 5.

The Complainant is also the owner of the domain name <gilead.com>, which was registered on May 27, 1995, and has been used by the company since as early as 1997, in connection with its pharmaceutical products and related medical services.

The disputed domain name was registered on August 7, 2022, and does not resolve to an active website.

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

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

The Complainant asserts that the disputed domain name is confusingly similar to the Complainant's mark GILEAD, since the disputed domain name wholly incorporates the Complainant's mark. The addition of the top-level domain ".quest" shall be disregarded in this context.

The Complainant further asserts that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not associated or affiliated with the Complainant and the Respondent has not been authorized by the Complainant to use the disputed domain name.

The Complainant finally asserts that the disputed domain name was registered and is being used in bad faith. The Respondent must thus have been fully aware of the Complainant's business when the disputed domain name was registered, and the fact that the Respondent uses a privacy service and does not use the disputed domain name actively are also indications of the Respondent's bad faith.

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

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

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

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

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

The Panel finds that under the Policy, the disputed domain name <gileadsciences.quest> is identical to the Complainant's registered trademark GILEAD SCIENCES because it contains the mark in its entirety. The generic Top-Level Domain ("gTLD") ".quest" is typically disregarded under the confusing similarity test.

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

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

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

The Respondent has not produced, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings. Moreover, the Panel finds that the composition of the disputed domain name is such that it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Consequently, the Panel finds that the condition in paragraph 4(a)(ii) of the Policy is also fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the 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 domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the 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.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the evidence on record of the use of the Complainant's GILEAD and GILEAD SCIENCES marks, and the distinctive nature of these marks, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's marks.

Further, the Panel finds that the Respondent could not have been unaware of the fact that it chose a domain name, which based on its composition could attract Internet users in a manner that is likely to create confusion for such users.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name does not currently resolve to an active website. However, as first stated in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and repeated in many subsequent decisions under the UDRP: "the concept of a domain name 'being used in bad faith' is not limited to positive action; inaction is within the concept. That is to say, it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith." See section 3.3 of the [WIPO Overview 3.0](#)

Noting that the disputed domain name incorporates the Complainant's distinctive trademark GILEAD, that no Response has been filed and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name, and considering all the facts and evidence, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled 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, <gileadsciences.quest> be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: June 5, 2023