

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Domains By Proxy, LLC / Name Redacted  
Case No. D2022-0065

### **1. The Parties**

The Complainant is Eli Lilly and Company, represented by Faegre Drinker Biddle & Reath, LLP, United States of America (“United States”).

The Respondent is Domains By Proxy, LLC, Arizona, United States / Name Redacted.

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

The disputed domain name <elilillygroup.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 January 7, 2022. On January 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 10, 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 January 12, 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 amended Complaint on January 17, 2022.

The Center verified that the Complaint together with the amended 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 January 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2022.

The Center appointed Colin T. O'Brien as the sole panelist in this matter on February 23, 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 is an internationally recognized pharmaceutical company that has been in business for over 145 years. The Complainant has introduced to market well-known drugs such as Prozac, Zyprexa, and Cialis, and developed a method to mass-produce penicillin as early as the 1940s.

Since 1916, the Complainant has owned a United States trademark registration in the ELI LILLY AND COMPANY mark (Registration No. 113,361). The Complainant has owned a United State trademark registration for the LILLY mark (Registration No. 1,226,434) since 1983 in association with medicines, pharmaceutical preparations, and drugs. The Complainant currently owns 175 registrations of the LILLY mark in 113 countries, and 99 registrations of the LILLY logo mark in at least 72 countries.

The Complainant operates its official website at <lilly.com>, which predominately features the color red and red accents, and corresponds to the red LILLY Logo that the Complainant uses throughout the world. The website is used to advertise and provide information about the Complainant's products. The <lilly.com> domain name was registered by the Complainant on May 10, 1991.

The disputed domain name was registered on October 23, 2021. The person identified in the Whois is an actual employee of the Complainant, but is not the Respondent in this instance and did not authorize registration of the disputed domain name. The disputed domain name is still currently active and directs visitors to the supposed homepage of the "Lilly Innovation Hub" ran by the "Eli Lilly Partners Group".

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

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

The Complainant's use and registration of the LILLY mark, the ELI LILLY AND COMPANY mark, and the LILLY logo mark predate the Respondent's registration by decades. As a result, the Complainant has both senior and exclusive rights to these marks. The Complainant's use and registration of the <lilly.com> domain name predates the Respondent's registration by decades, as well.

The disputed domain name contains the unique name "Eli Lilly" and a descriptive term "group". The addition of this descriptive term does not preclude a finding of confusing similarity and should be disregarded for this inquiry. Thus, the relevant portion of the disputed domain name is only "Eli Lilly".

The disputed domain name reproduces in its entirety the Complainant's LILLY mark, and a significant portion of its ELI LILLY AND COMPANY mark. Additionally, Eli Lilly is the original founder of the Complainant's company and the basis of these respective marks, and his well-known name has become synonymous with the Complainant and its business. Because the Respondent is marketing itself in the same business as Complainant, the disputed domain name is identical or confusingly similar to the Complainant's LILLY and ELI LILLY AND COMPANY marks.

The Respondent is neither affiliated with the Complainant in any way nor has the Complainant licensed, authorized, or permitted the Respondent to use or register, or to seek registration, of any domain name or trademark incorporating the LILLY or ELI LILLY AND COMPANY marks. In fact, the Respondent appears to have impersonated an actual employee of the Complainant when registering the disputed domain name, likely in an attempt to pass off the registration as a legitimate undertaking by the Complainant.

The disputed domain name directs visitors to a web page that claims to be “The Future of Healthcare – Lilly Innovation Hub”, prompts visitors to “sign up” by entering contact and other information, and indicates that their group “aligns corporate investors with HealthIT startups”. The Complainant itself operates an Innovation Center that performs similar functions. The disputed domain name also prominently features the color red and red accents, similar to the Complainant’s <lilly.com> domain name and its LILLY Logo mark. Thus, the Respondent is attempting to impersonate or suggest an affiliation with the Complainant and its services in order to seek commercial gain from potential investors and startups.

The disputed domain name fails to give any contact information for its owner, the “Eli Lilly Partners Group”, and only allows visitors to submit their own information by inviting them to register.

In light of these factors, the Respondent is attempting to deceive visitors, by impersonating or suggesting an affiliation with the Complainant, in order to gain access to personal information that is potentially confidential or at the very least sensitive. This does not constitute a *bona fide*, legitimate, or noncommercial use.

The Respondent’s registration and use of the disputed domain name are in bad faith based upon the aforementioned circumstances. Namely, that the Respondent is attempting to impersonate the Complainant, or at least suggest an affiliation, in order to deceive visitors into surrendering private information. Further, the Respondent provided falsified Whols information when registering the disputed domain name in the name of an actual employee of the Complainant, in order to pass off the domain as a legitimate undertaking of the Complainant. Lastly, the Respondent appears to be operating a fraudulent business by posing as a department or group within the Complainant’s company so that they can gain access to sensitive information of visitors for commercial gain. UDRP panels have found all of these instances to be examples of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complainant has demonstrated it owns registered trademark rights in the globally famous LILLY and ELI LILLY AND COMPANY marks. The addition of the term “group” does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions Third Edition (“[WIPO Overview 3.0](#)”).

Accordingly, the disputed domain name is confusingly similar to marks in which the Complainant has rights.

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

The Complainant has presented a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name and has not been commonly known by the disputed domain name. The fact that the Respondent obtained the disputed domain name decades after the Complainant had begun using its globally famous LILLY and ELI LILLY AND COMPANY marks indicates the Respondent sought to piggyback on these marks for illegitimate reasons, namely to secure private, confidential, or sensitive information from visitors hoping to invest in health-related startups, or from those actually operating these startups. The Respondent received no authorization or license to do so.

After a complainant has made a *prima facie* case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See, e.g., *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

Here, the Respondent has provided no evidence of any rights or legitimate interests in the disputed domain name.

In the absence of any evidence rebutting the Complainant's *prima facie* case indicating the Respondent's lack of rights or legitimate interests in respect of the disputed domain name, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The disputed domain name was registered decades after the Complainant first registered and used its globally famous LILLY and ELI LILLY AND COMPANY trademarks. The evidence on the record provided by the Complainant with respect to the extent of use and global fame of its marks, combined with the absence of any evidence provided by the Respondent to the contrary, is sufficient to satisfy the Panel that, at the time the disputed domain name was registered, the Respondent undoubtedly knew of the Complainant's LILLY and ELI LILLY AND COMPANY trademarks, and knew that it had no rights or legitimate interests in the disputed domain name.

There is no reason for the Respondent to have registered the disputed domain name containing the entirety of the LILLY trademark, and a majority of the ELI LILLY AND COMPANY trademark, with the addition of the term "group".

Further, the use of the disputed domain name by the Respondent is clearly in bad faith. Paragraph 4(b)(iv) states that evidence of bad faith may include a respondent's use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's 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. The Complainant has submitted evidence that the Respondent has used the disputed domain name in order to direct visitors to a website which claims to be a department or group within the Complainant's business seeking to secure private, confidential, or sensitive information from its visitors. This constitutes an impersonation, or at the very least, is confusingly similar or suggestive of an affiliation with the Complainant. Further, the Respondent registered and currently uses the disputed domain name under false Whois information, listing an actual employee of the Complainant. The Complainant has submitted evidence that this was unauthorized. The Respondent clearly is attempting to pass off the disputed domain name as a legitimate undertaking of the Complainant and its globally famous LILLY and ELI LILLY AND COMPANY marks in order to divert visitors away from the Complainant. This is a textbook example of bad faith use on the part of the Respondent.

In the absence of any evidence or explanation from the Respondent, the Panel finds that the only plausible basis for registering and using the disputed domain name has been for illegitimate and bad faith purposes.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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, <elilillygroup.com> be transferred to the Complainant.

/Colin T. O'Brien/

**Colin T. O'Brien**

Sole Panelist

Date: March 7, 2022