

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Karl Schnurch, EdenMedia
Case No. D2022-3826

1. The Parties

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

The Respondent is Karl Schnurch, EdenMedia, Seychelles.

2. The Domain Name and Registrar

The disputed domain name <lilycares.com> is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 2022. On October 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 14, 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 October 17, 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 October 20, 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 October 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 15, 2022.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on November 17, 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 has been in the pharmaceutical business since 1876, when it was founded by Colonel Eli Lilly and claims to have begun using the LILLY mark in commerce since as early as February, 1895.

The Complainant owns numerous registrations for the trademark LILLY in many countries around the world, including the following:

United States Trademark Registration No.1226434 LILLY, registered on December 7, 1983 in association with medicines, pharmaceutical preparations and drugs; and

United States Trademark Registration No. 5821069 LILLY CARES, registered on July 30, 2019.

In 1997, the Complainant created the Lilly Care Foundation, Inc. that provides a patient assistance program called "Lilly Cares", which provides eligible patients, who are United States residents, with access to the Complainant's medications free of charge.

The Complainant's rights in the LILLY CARES mark dates back to September 2004, when it began using the mark in commerce in the United States in connection with charitable services.

The Complainant owns the domain name <lilly.com> registered on May 10, 1991, which resolves to a website used to provide information on the Complainant's pharmaceutical products.

Also, the Complainant owns the domain name <lilycares.com>, registered on January 7, 2002 that resolves to a website in which the Complainant promotes its patient assistance program.

The disputed domain name <lilycares.com> was registered on May 4, 2015 and resolves to a webpage providing links to various commercial websites.

5. Parties' Contentions

A. Complainant

The Complainant claims to have begun using the LILLY mark in commerce since as early as February 1, 1895.

Because of the long time that the Complainant has used the LILLY mark in commerce to identify the source of pharmaceutical preparations, the Complainant believes that the LILLY trademark is well-known. Moreover, in several UDRP cases WIPO panels have expressly found that the Complainant's LILLY mark is well-known, as shown in the three cases attached as Annexes 4 A, B and C to the Complaint.

The free medication of the Lilly Care program provided to patients in 2021 was valued at more than USD 2.6 billion, an over 50 percent increase in value from 2020 (see Annex 7 to the Complaint). For these reasons the Complainant believes that it is reasonable to infer that the LILLY CARES trademark is also well-known.

The Complainant claims that the disputed domain name is confusingly similar with the trademarks LILLY and LILLY CARES in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

There is no evidence that the Respondent is commonly known by the term "Lilly" or the phrase "Lily Cares". The Respondent is neither using the disputed domain name in connection with a *bona fide* offering of goods and services nor making a legitimate noncommercial or fair use of the disputed domain name.

The Respondent is using the Complainant's LILLY and LILLY CARE trademarks in the disputed domain name to attract Internet consumers to its website from which the Respondent likely derives financial benefit by providing click-through traffic to commercial websites.

When an Internet user clicks on a "Visit Website" link the user is directed to "www.rexsaversllc.com", which advertises a patient assistance program for a fee. Unsuspecting consumers have been fooled by the Respondent's website and assumed that they were dealing with the Complainant. In particular, one consumer paid USD 94 for services to a third party before realizing that she was not dealing with the Complainant and reached out to the Complainant on September 13, 2022 by email to express her alarm and concern (Annex 14 to the Complaint).

Prior UDRP decisions have found against the Respondent in three different proceedings relating to three different domain names within the past several months, each of which were transferred to the respective complainants because the Respondent had registered and used the domain names that were identical or confusingly similar to a trademark in which the respective complainants had rights, in bad faith, without right or legitimate interest, see *Muitas Ltd v. on behalf of clipes4sale.com OWNER c/o whoisproxy.com. / Host Master, EdenMedia*, WIPO Case No. [D2022-0175](#); *Withings v. Host Master, EdenMedia*, WIPO Case No. [DCO2022-0047](#); and *Agence Centrale Des Organismes De Sécurité Sociale (ACOSS) v. Host Master, EdenMedia*, WIPO Case No. [D2022-1182](#). The record clearly establishes that the Respondent has engaged in a pattern of bad faith conduct, which has continued in this instant case.

Last but not least, the Respondent's use of the Complainant's LILLY and LILLY CARES marks in the <lilycares.com> disputed domain name is potentially harmful to the health of many unsuspecting consumers who may be seeking assistance from the Complainant and register for the program linked through the Respondent's website under the mistaken impression that they are dealing with the Complainant. For all those reasons the Respondent clearly registered and is using the disputed domain name in bad faith.

Finally, the Complainant requests the Panel to issue a decision ordering 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

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with 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 disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's LILLY and LILLY CARES trademarks.

The disputed domain name <lilycares.com> incorporates the Complainant's trademark LILLY CARES in its entirety with the omission of the letter "l", which is not sufficient to prevent a finding of confusing similarity.

The disputed domain name is also confusingly similar to the well-known trademark LILLY, since "lily" is almost identical to the term "lilly" and the word "cares" does not avoid a finding of confusing similarity.

The generic Top-Level Domain ("gTLD") ".com" is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademarks LILLY and LILLY CARES in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a domain name by demonstrating any of the following non-exclusive defenses:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under Section 6.C of this Decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

As established in section 2.5 of [WIPO Overview 3.0](#): "Fundamentally, a respondent's use of a domain name will not be considered 'fair' if it falsely suggests affiliation with the trademark owner; the correlation between

a domain name and the complainant's mark is often central to this inquiry." Here, the nature of the disputed domain name carries a risk of implied affiliation.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's trade name and trademarks LILLY and LILLY CARES mentioned in section 4 above (Factual Background) when it registered the disputed domain name <lilycares.com> on May 4, 2015. By that time, the Complainant's trademarks had been intensely used and the well-known trademark LILLY had been registered long before.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business by incorporating the Complainant's trademark LILLY CARES with the omission of the letter "l", which makes this a typical case of "cybersquatting" tantamount to bad faith "*per se*". Moreover, the website to which the disputed domain name resolves contains links to third party websites, including one that offers purportedly similar services to those offered by the Complainant and has confused Internet users to think that they had reached an official website of the Complainant.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name, the nature of the disputed domain name and the use given to the disputed domain name are indications of bad faith (as stated in section 3.2.1 of the [WIPO Overview 3.0](#)). Furthermore, in view of previous UDRP decisions, this would seem to be the fourth time the Respondent has registered and is using a domain name in bad faith; in this case, the disputed domain name.

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

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, <lilycares.com> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: December 1, 2022