

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. anilx cols
Case No. D2023-3641

1. The Parties

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

The Respondent is anilx cols, Finland.

2. The Domain Name and Registrar

The disputed domain name <inlilly.com> is registered with CloudFlare, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 29, 2023. On August 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 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 (“Data Redacted”) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 31, 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 the same date.

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 September 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 22, 2023.

The Center appointed Archibald Findlay SC as the sole panelist in this matter on September 27, 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 following facts and circumstances are to be found in the Complaint and its Annexures and, in the absence of challenge, can be accepted as background.

The Complainant is a multinational corporation founded in 1876 and is one of the world's largest providers of pharmaceutical products with a reputation for maintaining the highest standards for its medical products. Over the years the Complainant has been at the forefront of significant medical breakthroughs and has developed some of the world's most widely known pharmaceuticals.

The Complainant's U.S. rights in the LILLY mark date back to as early as February 1, 1895, when the Complainant began using the LILLY trademark in commerce. The Complainant filed for seven registrations of the LILLY mark with the United States Patent and Trademark Office on December 7, 1981. The LILLY mark was registered on the principal register on February 8, 1983 (Registration No. 1,226,434) in association with medicines, pharmaceutical preparations, and drugs. To date, the Complainant has obtained 178 registrations of the LILLY trademark covering 114 countries around the world. Furthermore, the Complainant has 107 registrations of the LILLY Logo trademark covering at least 71 countries. In particular, the Complainant also owns registrations for the LILLY trademark and LILLY Logo trademark in China.

Due to the significant duration of time that the Complainant has used the LILLY mark in commerce to identify the source of pharmaceutical preparations, it contends that the LILLY trademark is well-known.

The Complainant's extensive common law trademark and service mark rights from its prior and extensive use of the LILLY trademark plainly satisfies the Policy. Further, the Complainant's multiple registrations of national effect also satisfy the Policy (*Horten Advokatpartnerselskab v. Domain ID Shield Service CO., Limited / Krutikov Valeriy Nikolaevich*, WIPO Case No. [D2016-0205](#)).

The disputed domain name was registered on August 5, 2023, and does not presently resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that because the Respondent registered the disputed domain name in August this year, the Complainant's rights in the LILLY trademark pre-date the Respondent's registration date, and the Complainant has both senior and exclusive rights in the mark. The Complainant also has an Internet presence, primarily through the website accessed by the domain name <lilly.com>. The <lilly.com> domain name was registered by the Complainant on May 10, 1991, and is used to advertise and provide information regarding its company and its pharmaceutical products. The Complainant has used this domain name to identify a website since at least as early as June of 1991.

It also asserts that the LILLY mark has become one of the most recognized and respected brands in the industry, enjoys widespread recognition in the trade, and is a source of significant goodwill for the Complainant. The Complainant has also registered domain names incorporating its LILLY mark, including its official website.

Moreover, the Respondent is neither affiliated with the Complainant nor licensed to use the Complainant's LILLY mark. Without the Complainant's knowledge or consent, the Respondent registered the disputed domain name on August 5, 2023.

The disputed domain name registered by the Respondent consists of the Complainant's distinctive LILLY mark and entire domain name, with the addition of the prefix "in". It is commonly understood that the letters "in" are the two-letter country code for India. Therefore, the disputed domain name incorporates a geographic abbreviation, along with the Complainant's registered trademark and domain names.

The abbreviation "in" does not eliminate confusing similarity with respect to the well-known LILLY mark. To the contrary, it enhances the confusion because patients seeking Complainant's products will potentially assume that the disputed domain name is the Complainant's website for advertising its products in India. As a result, the addition of the term "in" to the Complainant's well-known LILLY trademark neither prevents a finding of confusing similarity nor does it not negate the distinctiveness of Complainant's LILLY mark. With the exception of the geographic term "in" the disputed domain name consists solely of the Complainant's LILLY mark. Thus, Respondent's Domain Name is confusingly similar to Complainant's well-known LILLY trademark.

The disputed domain name is confusingly similar to the Complainant's distinctive and well-known LILLY mark within the meaning of paragraph 4(a)(i) of the Policy. As set forth above, the Complainant's rights in the LILLY mark are clearly established through registration and use, both in the U.S. and in numerous other countries around the world. At a minimum, the Complainant's mark is entitled to a presumption of validity by virtue of its registration with the United States Patent and Trademark Office. (*EAuto, L.L.C. v. Triple S. Auto Parts d/b/a Kung Fu Yea Enter., Inc.*, WIPO Case No. [D2000-0047](#).)

In considering the question of identity or confusing similarity, the first element of the Policy is essentially a standing requirement. The threshold inquiry under the first element of the Policy is largely framed in terms of whether the trademark and the disputed domain name, when directly compared, are identical or confusingly similar. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter "[WIPO Overview 3.0](#)"), paragraph 1.7 (and cases cited therein).

The disputed domain name is confusingly similar to Complainant's well-known LILLY mark and contains a slight, but intentional, variation of the Complainant's own well-known domain name. It follows, so the Complainant contends, that the disputed domain name is clearly confusingly similar to the Complainant's registered trademark LILLY.

It is highly unlikely that the Respondent would not have been aware of the Complainant's legal rights in the disputed domain name containing the word "lilly" at the time of registration and there is no evidence that the Respondent is commonly known by or associated with the term "inlilly".

The Respondent is also not using the disputed domain name for a *bona fide* purpose and appears to not have any active content when accessed from a desktop computer. However, the Complainant contends that when accessed on a mobile device, the disputed domain name resolves to an imposter website where the Respondent is fraudulently using the disputed domain name to impersonate the Complainant and directs users to a website that imitates a login page for the Complainant, which asks them to provide personal data and login information.

In finding the redirection of Internet users using a mobile device to a website designed to mimic the Complainant's login page in order to gather personal data does not, it asserts, constitute a *bona fide* sale of goods or services or a legitimate noncommercial or fair use within the meaning of the Policy. Instead, the Respondent is relying upon the valuable reputation and goodwill of the LILLY mark to impersonate the Complainant in an apparent attempt to gain confidential information and to potentially commit fraud.

B. Respondent

The Respondent did not reply to the Complainant's contentions. By the failure to respond, the Respondent is in default in terms of paragraphs 5(e) and 14 of the Rules and paragraph 8(c) of the Supplemental Rules, with the result that the Panel must now deal with the matter on the Complaint.

6. Discussion and Findings

A. Substantive Elements of the Policy

Paragraph 15(a) of the Rules requires that:

"A Panel shall decide a complaint on the basis of the statements and documents submitted 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 a 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.
- (iii) That the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy sets out four illustrative circumstances or acts which would, for the purposes of paragraph 4(a)(iii) above, be evidence of the registration of a domain name in bad faith. These are non-exclusive.

Similarly, paragraph 4(c) of the Policy sets out three illustrative circumstances which would demonstrate the Respondent's rights or legitimate interests in the disputed domain name for the purpose of paragraph 4(a)(ii).

B. Effect of Default

Notwithstanding the fact that a respondent may be in default, a complainant bears the burden of proof in respect of each of the three main elements in terms of paragraph 4(a) of the Policy. Such default does not, *per se*, entitle a complainant to a finding in its favor by reason thereof, as failure by the complainant to discharge the burden of proof will still result in the complaint being denied (*M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. [D2010-0941](#)). It follows that such default does not, of itself, constitute an acceptance or an admission of any of the averments or contentions put forward, or of the supporting evidence put up (*Standard Innovation Corporation v. Shopintimates USA*, WIPO Case No. [D2011-0049](#)). The Panel is nevertheless not bound to accept all that has been put up by the Complainant but must evaluate it as it stands (*Brooke Bollea, a.k.a Brooke Hogan v. Robert McGowan*, WIPO Case No. [D2004-0383](#); *San Lameer (Pty) Ltd and Sanlam Ltd v. Atlantic Internet Services (Pty) Ltd*, WIPO Case No. [D2010-0551](#)).

However, paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, a panel shall draw such inference as it considers appropriate from the failure of a party to comply with a requirement of the Rules (*Allianz, Compañía de Seguros y Reaseguros S.A. v. John Michael*, WIPO Case No. [D2009-0942](#)).

In the present instance, the Panel finds that there are no exceptional circumstances for the failure of the Respondent to submit a Response, particularly in the light of the fact that the Center wrote to the Respondent, advising of procedural matters and time limits.

From this, the Panel considers that it may accept that the Respondent does not deny the facts asserted and contentions made by the Complainant based on such facts (*Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *LCIA (London Court of International Arbitration) v. Wellsbuck Corporation*, WIPO Case No. [D2005-0084](#); *Ross-Simons, Inc. v. Domain.Contact*, WIPO Case No. [D2003-0994](#); *Standard Innovation Corporation v. Shop Intimates USA*, *supra*; *VKR Holding A/s v. Above.com Domain Privacy/Host Master, Transure Enterprise Ltd.*, WIPO Case No. [D2011-0040](#); *Knorr-Bremse AG. v. WhoisGuard Protected, WhoisGuard, Inc. / Mosco Binzu*, WIPO Case No. [D2019-0616](#)).

Thus, in the view of the Panel, it may accept asserted facts that are not unreasonable, with the consequence that the Respondent will be subjected to inferences that flow naturally from the information provided by the Complainant (*Reuters Limited v. Global Net 2000, Inc. supra*; *RX America, LLC. v. Matthew Smith*, WIPO Case No. [D2005-0540](#); *Allianz, Compañía de Seguros y Reaseguros S.A. v. John Michael*, *supra*; *Standard Innovation Corporation v. Shopintimates USA*, *supra*; *VKR Holding A/s v. Above.com Domain Privacy/Host Master, Transure Enterprise Ltd.*, *supra*; *Groupe Auchan v. Anirban Mitra* WIPO Case No. [D2012-0412](#); *Barclays Bank PLC v. Miami Investment Brokers Inc*, WIPO Case No. [D2012-1213](#)).

C. Domain Name is Identical or Confusingly Similar

The Complainant put up an extensive list of its registered LILLY marks which it owns in many countries.

The fact that the word mark LILLY has been incorporated entirely into the disputed domain name is sufficient to establish that it is identical or confusingly similar to the Complainant's registered trademark (*Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. [D2000-0253](#); *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Com*, WIPO Case No. [D2001-0784](#); *Lilly ICOS LLC v. John Hopking / Neo net Ltd.*, WIPO Case No. [D2005-0694](#); *Société Des Produits Nestlé SA v. Mustafa Yakin / Moniker Privacy Services*, WIPO Case No. [D2008-0016](#)). See also [WIPO Overview 3.0](#) section 1.7.

The addition of the letters "in" does not prevent a finding of the confusing similarity between the disputed domain name and the Complainant's mark. (*TPI Holdings, Inc. v. LaPorte Holdings*, WIPO Case No. [D2006-0235](#); *Allstate Insurance Company v. Rakshita Mercantile Private Limited*, WIPO Case No. [D2011-0280](#).) See also WIPO overview 3.0 section 1.8.

In these circumstances, the Panel has no difficulty in concluding that the Complainant has established the first element in terms of paragraph 4(a)(i) of the Policy.

D. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate its rights to or legitimate interests in the disputed domain name for the purposes of Paragraph 4(a)ii) of the Policy, namely:

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

(ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent 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 customers or to target the trademark or service mark at issue.

Although paragraph 4(a)ii) requires the Complainant to prove that the Respondent has no rights to or legitimate interests in the domain name, once the Complainant establishes a *prima facie* case that the Respondent has no rights or legitimate interests in the domain name, the burden of production of evidence on this factor shifts to the Respondent to rebut the showing, despite the overall burden of proof remaining

upon the Complainant to prove each of the three elements of paragraph 4(a) of the Policy. (*Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#); *Universal City Studios, Inc. v. David Burns and Adam-12 Dot Co*, *supra*).

Having defaulted, the Respondent has placed itself in a position that it has not produced any evidence to rebut such *prima facie* case as may have been established by the Complainant, and the enquiry must therefore focus upon what is evidenced by the Complainant in order to determine whether or not it has been so established.

The Complainant contends that it is the sole proprietor of the trademark LILLY and that the Respondent has not been given any permission to register or use any domain name incorporating the trademark of the Complainant. It follows, therefore, that the Respondent has no right to the use of that mark or to incorporate the Complainant's domain name the disputed domain name as part of the disputed domain name and that any unauthorized use for commercial purposes would violate the wide-reaching trademark rights enjoyed by the Complainant. (*Guerlain S.A. v. Peikang*, WIPO Case No. [D2000-0055](#); *Caesars World, Inc. and Park Place Entertainment Corporation v. Japan Nippon*, WIPO Case No. [D2003-0615](#); *AT&T Corp. v. Roman Abreu d/b/a Smartalk Wireless*, WIPO Case No. [D2002-0605](#); *America Online, Inc. v. Xianfeng Fu*, WIPO Case No. [D2000-1374](#); *Sybase, Inc. v. Analytical Systems*, WIPO Case No. [D2004-0360](#); *San Lameer (Pty) Ltd and Sanlam Ltd v. Atlantic Internet Services (Pty) Ltd*, *supra*).

Apart from there being no authorization on the part of the Complainant, there is no relationship or association between the Complainant and the Respondent, whether by license or otherwise, which also militates against the Respondent having rights or legitimate interests in or other entitlement which might fall within that purview (*Sybase, Inc. v. Analytical Systems*, *supra*).

The Complainant, having made out a *prima facie* case, the burden of adducing evidence has shifted to the Respondent which, by reason of silence due to default, has not come forward with any counter ancillary evidence (*Julian Barnes v. Old Barn Studios Limited*, WIPO Case No. [D2001-0121](#); *The American Automobile Association, Inc. v. aaaaautoinsurance.com Privacy--Protect.org, aaa-netaccess.com Privacy--Protect.org, aaanetacceess.com Privacy--Protect.org, Isaac Goldstein*, WIPO Case No. [D2011-2069](#)).

Moreover, there is no evidence that the Respondent has been commonly known by that disputed domain name or otherwise had rights in the disputed domain name (*Abbott Laboratories v. Li Jian Fu, Li Jian Fu*, WIPO Case No. [D2016-0501](#)).

In view of the facts and circumstances put up on this ground and which are unchallenged, the Panel is of the view that the Complainant should therefore succeed on this ground as well.

The Panel is therefore satisfied that, in the circumstances, the Complainant has established the second element of the Policy.

E. Registration & Use in Bad Faith

Paragraph 4(b) of the Policy provides that for the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that you have registered or you have 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 your documented out of pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation or endorsement of your website or location or of a product or service on your website or location."

It is apparent from the evidence put up by the Complainant that the Respondent is using the disputed domain name intentionally to create a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its websites.

The implication arising from the disputed domain name, in the mind of a would-be customer, is therefore clearly that it is either of or in some way associated with the Complainant, and entitled to the private information of users that it requests. That would, by application of paragraph 4(b)(iv) of the Policy, constitute bad faith registration and use. (*Media24 Limited v. Llewellyn Du Randt*, WIPO Case No. [D2009-0699](#); *San Lameer (Pty) Ltd and Sanlam Ltd v. Atlantic Internet Services (Pty) Ltd*, *supra*).

The selection of a disputed domain name that is the same as, or confusingly similar to, the Complainant's trademark and domain name, particularly in the absence of any explanation, leads to the conclusion, in the view of the Panel, that the Respondent must have known of the reputation of the Complainant in the market and therefore it selected the disputed domain name in circumstances where it was very well aware of the Complainant's reputation and intended to benefit therefrom (*Deutsche Post AG v. MailMij LLC*, WIPO Case No. [D2003-0128](#); *Barclays Bank PLC v. Miami Investment Brokers Inc*, WIPO Case No. [D2012-1213](#)), particularly where it is so widely known globally. Moreover, such conduct by the Respondent implies that it intended to suggest to would be customers that it was in some way linked to or associated with the Complainant and thereby solicits such private information by creating that belief in the mind of consumers.

The Panel is therefore satisfied that the Complainant has established the third element under paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraph 4(a) of the Policy and paragraph 15 of the Rules, the Panel orders that the disputed domain name <inlilly.com> be transferred to the Complainant.

/Archibald Findlay SC/

Archibald Findlay SC

Sole Panelist

Date: October 11, 2023