

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti

Case No. D2023-3674

### **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 Shoaib Manzoor, XMart Host, Pakistan, Zain Ali and Rauf Bhatti.

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

The disputed domain name <mounjaromexicopharmacy.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 31, 2023. On September 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 September 5, 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 September 6, 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 September 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 28, 2023. The Respondent sent informal communication emails on September 5, 8 and 14, 2023. The Center also received email communications

from a third party (or third parties) dated September 19, 21, 27, and 29, 2023. Accordingly, the Center notified the parties of the commencement of panel appointment process on September 29, 2023.

The Center appointed Steven A. Maier as the sole panelist in this matter on October 4, 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.

The Center received further unsolicited supplemental filings from the Complainant dated October 5, 11, and 13, 2023 and from the third party (or parties) dated October 6, 12, 13, 17 and 23, 2023.

#### **4. Identity of Respondent**

In his emails dated September 5, 8, and 14, 2023, the Registrar-disclosed respondent stated that he was only a hosting provider for the disputed domain name and that he had requested the Registrar to change the relevant particulars to the correct beneficial holder. While the Registrar-disclosed respondent provided two email addresses for the supposed beneficial holder(s) of the disputed domain name, the Panel finds that he did not provide sufficient details to amount to “clear disclosure” of the identity and contact information for those parties (see paragraph 4.4.5 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The Panel does not consider in these circumstances that the Registrar-disclosed respondent (whose responsibility it was to keep the relevant registration details up to date) can properly be removed as the Respondent in the proceeding. However, noting that the third-party communications with the Center dating from September 19, 2023, were received from parties apparently named Zain Ali and Rauf Bhatti, in the capacity of beneficial owner(s), the Panel directs that these two individuals be added as respondents in the proceeding. The term Respondent in the remainder of this Decision shall include these individuals accordingly.

#### **5. Factual Background**

The Complainant is a pharmaceutical company headquartered in Indiana, United States.

The Complainant’s products include an injectable, prescription-only medicine named and trademarked MOUNJARO, which is used in the treatment of type 2 diabetes.

The Complainant is the owner of numerous registrations for the trademark MOUNJARO in various territories throughout the world. Those registrations include, for example:

- Mexico Trade Mark registration number 2117473 for the word mark MOUNJARO, registered on September 2, 2020, in International Class 5; and
- United States trademark registration number 6809369 for the word mark MOUNJARO, registered on August 2, 2022, in International Class 5.

The disputed domain name was registered on April 17, 2023.

The Complainant has produced evidence that, on August 1, 2023, the disputed domain name resolved to a website headed “mounjaro” (in a stylized form) and “Mounjaro Mexican Pharmacy”. The website stated: “Buy Mounjaro Mexico Online for Weight Loss Without Prescription” and “Buy Mounjaro Online in Mexico”. It featured what appear to be images of the Complainant’s MOUNJARO products together with supposed instructions for use. The website header included the name “WEGOVY” within the navigation menu, which is a brand product from another pharmaceutical company than the Complainant.

## 6. Parties' Contentions

### A. Complainant

The Complainant submits that it launched its MOUNJARO product in June 2020, that the product earned almost USD 280 million in worldwide revenue in that year alone, and that such revenue has continued to increase. The Complainant states that MOUNJARO is an invented term, and that the mark has had an internet presence since at least May 2022 in conjunction with the Complainant's own website at "www.mounjaro.com". The Complainant contends that its MOUNJARO mark is distinctive and has garnered a high degree of media attention, examples of which it provides.

The Complainant submits that the disputed domain name is confusingly similar to its MOUNJARO trademark. It states that the disputed domain name reproduces its MOUNJARO mark in full, and that the additions of the geographical term "mexico" and the word "pharmacy" do not eliminate the confusing similarity between the disputed domain name and its trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has no relationship with the Respondent and has never authorized it to use its MOUNJARO trademark, that the Respondent has not commonly been known by the disputed domain name and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name.

The Complainant contends, in particular, that the Respondent's use of the MOUNJARO trademark does not meet the criteria set out in *Okidata Americas, Inc v. ASD, Inc*, WIPO Case No. [D2001-0903](#) for the legitimate resale of goods by reference to a third-party trademark. The Complainant contends that the Respondent's website does not offer only the Complainant's product, and that that the WEGOVY product, to which the website provides a link, is from another pharmaceutical company and is competitive with the Complainant's products. The Complainant adds that the Respondent's website does not include any disclaimer making clear the Respondent's relationship (or lack thereof) with the Complainant. Further, the Complainant submits that the Respondent cannot lawfully sell the genuine MOUNJARO product in Mexico as it has not been approved for sale in Mexico, and is any event a prescription-only medicine.

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It contends that the Respondent was obviously aware of its MOUNJARO trademark owing to the "blockbuster" success of the product and based on the Respondent's use of the disputed domain name to offer what purports to be that product. The Complainant states that the Respondent has unlawfully copied the Complainant's product images for use on its website. It submits that the Respondent is using the public recognition of its MOUNJARO trademark misleadingly to drive Internet traffic to its website. The Complainant reiterates that the MOUNJARO product may only be used as licensed and as prescribed by a physician, and that the Respondent's actions therefore constitute a danger to health.

The Complainant requests the transfer of the disputed domain name.

### B. Respondent

The Respondent did not file a formal Response in the proceeding. However, in the email received by the Center dated September 19, 2023, the Respondent stated:

"There is no any reason defined on which domain dispute is happening. We read all the documents but unfortunately there is no reason why you were blamed. We are doing legal business and registered our trademark even though a 5 year fee had been paid. We know the icann rules and know everything like that... When justifying a domain dispute to ICANN, you typically need to demonstrate that the domain registration or use violates ICANN's policies or agreements."

The Respondent annexed a document to the above email, headed “North Carolina Medical Board” and “Mounjaro License Certificate”. The document states that “The Mounjaro company is currently licensed with the NC Medical Board ...” and includes details of a named physician, operating in Winston-Salem, North Carolina, United States.

### **C. Unsolicited Supplementary Filings**

In the Complainant's unsolicited supplemental filing dated October 5, 2023, it submitted that it could not have known of the Respondent's submissions above and should be entitled to answer them. It contends in this regard that the North Carolina Medical Board does not issue “Mounjaro License Certificates”, that there is no healthcare company known as “The Mounjaro Company” and that the named physician's practice is in obstetrics and gynecology and therefore unrelated to the Complainant's MOUNJARO product. The Complainant submits, therefore, that the Respondent is falsely claiming to be licensed to sell the MOUNJARO product and to being associated with the named physician.

In its unsolicited supplemental filing dated October 6, 2023, the Respondent submitted a similar “North Carolina Board Medical Certificate” as referred to above, citing the same certificate and license numbers, but on this occasion omitting the reference to “The Mounjaro company” and purporting to state that the (same) named physician is the license holder.

The Respondent also stated:

“As discussed with our lawyer we have opened the case in USA Court Case id : FLO: 786533 against dispute opener and proceeding company as well. We have direct stay orders as per our lawyer discussion we had submitted proofs and delivery orders avoidance just to confirm our legibility of business.”

In its unsolicited supplemental submission dated October 11, 2023, the Complainant submitted that, after due enquiry, it could find no reference the court proceedings supposedly cited by the Respondent and believed the Respondent's contentions in that regard to be false.

It is unsolicited supplemental filing dated October 12, 2023 the Respondent stated:

“All documents were provided with stay order from USA Court you should read that please have a look and let us know.”

On October 13, 2023, the Complainant submitted a further unsolicited supplemental filing. This filing exhibited documents received by the Complainant directly from the Respondent on October 11, 2023, extending to 337 pages, which purported to relate to the “stay order” said to have been granted by a United States court. The Complainant submitted that the documents were falsified. It argued, among other matters, that the proceedings appeared to have been initiated in the United States Supreme Court, which could not have been the case without prior litigation. Secondly, the Complainant noted (alongside various spelling errors) that the relevant documentation appeared to be addressed to the named physician in North Carolina referred to above, now supposedly as a Supreme Court Justice. Thirdly, the Complainant contended that the documents submitted by the Respondent related, in fact, to an unconnected Supreme Court filing, dating from 2022, in which neither the Complainant nor the Respondent had any interest. The Complainant submitted that the Respondent had simply “cut-and-pasted” names and dates over this existing filing.

The Panel determines that the parties unsolicited supplemental filings are to be admitted in the proceeding to the extent that they are summarized above.

### **7. Discussion and Findings**

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

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

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

The Complainant has established that it is the owner of registered trademark rights for the mark MOUNJARO. The disputed domain name incorporates that trademark in full, together with the terms “mexico” and “pharmacy”, neither of which prevents the Complainant’s trademark from being recognizable within the disputed domain name. The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

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

The Respondent appears to claim rights or legitimate interests in respect of the disputed domain name by virtue of being duly licensed by the North Carolina Medical Board to sell the Complainant’s MOUNJARO product. However, the Panel does not accept the Respondent’s submissions or evidence in this regard. For the reasons stated by the Complainant, the Panel finds the purported license certificates (two versions of which have been provided) to be unreliable and finds further that the Respondent has misrepresented an association with the named physician referred to in those certificates.

Nor would the Panel find that the Respondent is making legitimate use of the Complainant’s trademark in any event. With regard to the criteria set out in the *Okidata* case *supra*, and as further discussed in section 2.8.1 of [WIPO Overview 3.0](#), the Panel accepts the Complainant’s submission that the Respondent cannot lawfully be offering the Complainant’s MOUNJARO product for purchase from Mexico, as the product is not licensed for sale in that country and could not in any event be purchased without prescription. Secondly, the Panel finds that the Respondent has used the disputed domain name to provide a link to goods other than those of the Complainant, namely the “Wegovy” product. Thirdly, the Respondent’s website includes no sufficiently prominent disclaimer making clear that the Respondent is not authorized by, or otherwise legitimately affiliated with, the Complainant.

The Panel finds in the circumstances that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

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

The Panel finds the Complainant’s MOUNJARO trademark to be an invented name which is distinctive and widely recognized to designate the Complainant’s relevant pharmaceutical product. In view of this, and of the Respondent’s use of the disputed domain name, there can be no doubt that the Respondent registered the disputed domain name in the knowledge of the Complainant’s trademark.

For the reasons stated above, the Panel finds the Respondent’s use of the Complainant’s trademark within the disputed domain name to be misleading. The effect of the disputed domain name, together with the Respondent’s website content, is to misrepresent to Internet users that the website is owned or operated by, or otherwise legitimately affiliated with, the Complainant. The Panel further notes in this regard the copying by the Respondent of the Complainant’s own product images. Having rejected any argument based on the legitimate resale of the Complainant’s goods, the Panel finds that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy).

The Panel finds in the circumstances that the disputed domain name has been registered and is being used in bad faith.

## **8. Claimed Court Proceedings**

As indicated above, the Respondent has claimed that it has issued court proceedings against the Complainant in Florida, United States and that such proceedings include a “stay order”, presumably relating to this proceeding. The Panel has reviewed the documents supplied by the Respondent to the Complainant supposedly in this connection and finds that they are palpably false. The supposed Supreme Court application cannot be genuine for the reasons cited by the Complainant, and the overwhelming majority of the documents submitted by the Respondent obviously relate to another, unconnected, case.

In any event, as discussed in section 4.14 of [WIPO Overview 3.0](#), a panel would not generally suspend or terminate proceedings under the UDRP by reason of parallel proceedings taking place in a national court. Proceedings under the UDRP are decided on their own merits under the Policy, are not binding on any national court, and do not prevent either party from seeking judicial recourse. While a national court order which purported to enjoin any further proceedings under the Policy might require further scrutiny, the Respondent has failed to submit any genuine evidence of any such order in this case.

## **9. 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, <mounjaromexicopharmacy.com>, be transferred to the Complainant.

*/Steven A. Maier/*

**Steven A. Maier**

Sole Panelist

Date: October 24, 2023