

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. anilx cols
Case No. D2023-3761

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 Names and Registrar

The disputed domain names, <lillyh5.com>, <lillyin.com>, and <lillyios.com>, are registered with CloudFlare, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 8, 2023. On September 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 12, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 13, 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 13, 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 18, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 12, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on October 19, 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 is a leading pharmaceutical company which was founded in 1876 by Colonel Eli Lilly. Over the years, the Complainant has introduced to market well-known drugs such as vancomycin, Prozac, Zyprexa, and Cialis.

The Complainant owns multiple trademark registrations for LILLY in various jurisdictions. The Complainant's trademark portfolio includes, a United States trademark registration No. 1,226,434, registered on February 8, 1983, in addition to 175 registrations in 113 countries, and to 99 registrations of the LILLY logo mark in at least 72 countries.

The Complainant also owns the domain name <lilly.com> which was registered on May 10, 1991, and since then has been used by the Complainant in connection with its official website to promote and provide information regarding its pharmaceutical products.

The disputed domain names were all registered on August 5, 2023. The uncontested evidence submitted with the Complaint shows that the disputed domain names appear not to have any active content when accessed from a desktop computer; however, when accessed on a mobile device, they resolve to a website that imitates a login page for the Complainant. To log in, users are requested to provide personal data and login information.

5. Parties' Contentions

A. Complainant

The Complainant submits and contends that:

- The disputed domain names are confusingly similar to the LILLY mark in which the Complainant has rights. In this regard, the Complainant notes that each of the disputed domain names entirely incorporates the LILLY mark, which is well known internationally and firmly associated with the Complainant, as recognized by previous UDRP panel decisions (see *Elli Lilly and Company v. WhoisGuard Protected*, WIPO Case No. [D2007-0167](#); *Elli Lilly and Company v. URDMC, LLC*, WIPO Case No. [D2011-0715](#); *Elli Lilly and Company v. c/o SafestWhois Premium Registration Service/Jeremy Martin Gilstrap*, WIPO Case No. [D2015-0313](#); *Elli Lilly and Company v. Karl Schnurch, Eden Media*, WIPO Case No. [D2022-3826](#)). The addition respectively: (i) of the geographic identifier "in" (which is the country code for India); (ii) of the technological identifier "h5" (which is the abbreviation for "HTML5" and refers to a mobile page) and (iii) of the technical identifier "ios" (which refers to Apple's mobile operating system) does not influence the similarity.
- The Respondent has no rights nor any legitimate interests in respect of the disputed domain names since: (i) the Complainant has not given the Respondent permission, authorization or consent to use its LILLY mark, (ii) the Respondent is not commonly known by the disputed domain names, and (iii) the Respondent's use of the disputed domain name is neither a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use. The Respondent's demonstrated purpose and use of the disputed domain name is to confuse the public into believing that the disputed domain names are associated with the Complainant's in order to benefit from this confusion, and to improperly collect users' personal information as part of a phishing scheme.

- The Respondent has registered the disputed domain names in bad faith. The Complainant has been using the LILLY mark since at least as early as February 1895, and has extensively marketed and advertised its company, services and pharmaceutical products using this trademark. Therefore, because it is reasonable to infer that the LILLY trademark is well-known, and because of the Respondent's fraudulent conduct, it is certain that the Respondents knew of the Complainant's LILLY mark at the time of registering the confusingly similar disputed domain names.
- The Respondent is using the disputed domain names in bad faith to disrupt the Complainant's business by using it to impersonate the Complainant for commercial gain, as part of a phishing scheme.

The Complainant submits that in addition to the three disputed domain names, the Respondent also registered the <inlilly.com> domain name and used it in further of this same fraudulent scheme (see *Elli Lilly and Company v. anilx cols*, WIPO Case No. [D2023-3641](#)). A circumstance which shows that the Respondent has engaged in a pattern of bad faith conduct, which has continued in the present case.

Based on the above the Complainant requests the disputed domain names be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the LILLY mark based on the evidence submitted in the Complaint.

All three disputed domain names entirely incorporate the Complainant's LILLY mark and this is sufficient to establish the first element, as held by previous UDRP panels (e.g., *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#); *Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1923](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#)).

As recorded in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity under the first element.

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

Accordingly, the Panel finds that disputed domain names are confusingly similar to the LILLY mark in which the Complainant has rights. Therefore, the Complainant has established paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;
- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names, based on the following: (a) the Complainant holds prior rights in the registered and well-known LILLY mark; (b) the Respondent has not been authorized to use the Complainant's mark in any way and is not commonly known by the disputed domain names; and (c) the Respondent cannot demonstrate any legitimate noncommercial or fair use of the disputed domain names. In this connection, the Complainant has provided evidence that when accessed on a mobile device, the disputed domain names resolve to a website that imitates a login page for the Complainant, which asks the users to provide personal data and login information. Given the confusing similarity of the disputed domain names to the Complainant's trademark and the absence of any relationship between the Respondent and the Complainant, such a use of the disputed domain names is neither a *bona fide* use nor a legitimate noncommercial or fair use of the disputed domain names.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Here the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. By not submitting a response, the Respondent has failed to invoke any circumstance, which could have demonstrated any rights or legitimate interests in the disputed domain names under paragraph 4(c) of the Policy. There is no indication before the Panel of any activity in relation to the disputed domain names that would give rise to rights or legitimate interests to the Respondent. Moreover, the disputed domain names are confusingly similar to the Complainant's LILLY mark and carry a high risk of implied affiliation with the Complainant. Such risk for implied affiliation cannot constitute fair use ([WIPO Overview 3.0](#), section 2.5.1).

The Panel further notes that according to the evidence submitted by the Complainant - which has not been challenged by the Respondent - the disputed domain names are actually or could potentially be, used for phishing activity. Previous Panels have unanimously and consistently held that the use of a domain name for illegal activity, such as phishing, impersonation/passing off or other types of fraud can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#), section 2.13.1).

Therefore, the Panel finds that the Complainant has established paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain names has been registered and is being used in bad faith. Paragraph 4(b) provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a domain name registrant, which includes: “(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 web site 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 web site or location or of a product or service on your web site or location.”

The disputed domain names fully incorporate the LILLY mark. As per the uncontested evidence submitted with the Complaint, when accessed on a mobile device, the disputed domain names resolve to a website that imitates a login page for the Complainant. This indicates that the Respondent knew and targeted the Complainant’s trademark when registering the disputed domain names, with the deliberate intent to confuse the public into believing that the disputed domain names were associated with the Complainant in order to benefit from the reputation of the Complainant’s trademark and to attract for commercial gain Internet users. Use of the disputed domain names by the Respondent to pretend that it is the Complainant or someone acting under the Complainant’s authority was clearly intended to divert Internet users and to encourage them to provide their personal information, thereby disrupting the Complainant’s business.

As stated in section 3.4 of the [WIPO Overview 3.0](#), Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include for phishing, identity theft, or malware distribution.

All the above supports a finding of bad faith registration and use of the disputed domain names.

The Respondent being involved in the WIPO Case No. [D2023-3641](#) in relation to the registration of a different domain name (<inlilly.com> which also incorporates the Complainant’s trademark, is further evidence of bad faith.

Based on the above, the Panel finds that the Complainant has established also 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 names, <lillyh5.com>, <lillyin.com>, and <lillyios.com>, be transferred to the Complainant.

/Anna Carabelli/

Anna Carabelli

Sole Panelist

Date: November 2, 2023