

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Janni Louche  
Case No. D2023-3787

### **1. The Parties**

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

Respondent is Janni Louche, France.

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

The disputed domain name <mounjaro-kopen.com> (the “Domain Name”) 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 September 11, 2023. On September 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 13, 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 (On behalf of mounjaro-kopen.com OWNER c/o whoisproxy.com) and contact information in the Complaint. The Center sent an email communication to Complainant on September 13, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. 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 Respondent of the Complaint, and the proceedings commenced on September 14, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 11, 2023.

The Center appointed Marina Perraki as the sole panelist in this matter on October 13, 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**

Complainant owns trademark registrations for MOUNJARO including the United States trademark registration No. 6,809,369 MOUNJARO (word) filed on November 5, 2019, and registered on August 2, 2022, for goods in class 5 and the European Union trademark registration No. 18209187 MOUNJARO (word) filed on March 11, 2020, and registered on September 8, 2020, for goods in class 5.

The United States Food and Drug Administration announced its approval of the MOUNJARO pharmaceutical, a prescription pharmaceutical product for the treatment of type 2 diabetes, on May 13, 2022. Complainant launched the product in June 2022, and by the end that year, the product generated nearly USD 280 million in revenue worldwide and over USD 1.5 billion during the first half of 2023.

Complainant also has an Internet presence, primarily through its website at <mounjaro.com>. Complainant registered the domain name <mounjaro.com> on October 21, 2019, and uses it to advertise and provide information regarding its MOUNJARO pharmaceutical.

The Domain Name was registered on May 11, 2023, and at the time of filing of the Complaint led to a website (the Website) that offered for sale either counterfeit or gray market versions of Complainant's MOUNJARO product without a prescription. The Website prominently displayed Complainant's MOUNJARO trademark at the top of every page and purported to offer Complainant's MOUNJARO brand product. A copyright notice that states "Copyright © 2023 Mounjaro Buy" is included on the Website, while a similar statement that the website is "Powered by Mounjaro Buy" is also included therein.

Currently, the Domain Name leads to an inactive (forbidden) website.

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

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

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

#### **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

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

## A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds that Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Domain Name consists of the highly distinctive MOUNJARO mark, the term "kopen" (which means "buy" in Dutch), and the generic Top-Level Domain ("gTLD") ".com".

The Panel finds the entirety of the mark is reproduced within the Domain Name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms [here, "kopen" (which means "buy" in Dutch)] may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Domain Name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The gTLD is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yejun*, WIPO Case No. [D2017-0275](#)).

Based on the available record, the Panel finds the first element of the Policy has been established.

## B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds that Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, 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.

Based on the available record, the Panel finds the second element of the Policy has been established.

### C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. Complainant's mark had been widely used and registered before the time of the Domain Name registration by Respondent and enjoyed reputation, as repeatedly recognized (e.g., *BioNTech SE v. Lei Wang*, WIPO Case No. [DME2023-0006](#)). Therefore, noting also the composition of the Domain Name, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#)).

Respondent knew or should have known about Complainant's rights, noting also that such knowledge is readily obtainable through a simple browser search (*Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis, Inc.*, WIPO Case No. [D2009-0462](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name lead at the time of filing of the Complaint to the Website, prominently displaying Complainant's mark and selling per Complainant counterfeit or gray market goods which appeared falsely to be that of Complainant or an affiliate or partner of Complainant.

Furthermore, the Domain Name had been operated by intentionally creating a likelihood of confusion with Complainant's trademark and business. This further supports the finding of bad faith use ([WIPO Overview 3.0](#), sections 3.1.4 and 3.2.1).

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The non-use of a domain name would not prevent a finding of bad faith (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3). The Panel finds that the fact that the Domain Name currently leads to an inactive (forbidden) website does not prevent a finding of bad faith. Furthermore, panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds that Respondent's registration and use of the Domain Name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

### 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 Domain Name, <mounjaro-kopen.com>, be transferred to Complainant.

/Marina Perraki/

**Marina Perraki**

Sole Panelist

Date: October 27, 2023