

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. anilx cols
Case No. D2023-5049

1. The Parties

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

The Respondent is anilx cols, Finland.

2. The Domain Names and Registrar

The disputed domain names <lillybto.com>, <lillyitx.com>, and <lillyyes.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 December 4, 2023. On December 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 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 December 6, 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 December 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 December 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 3, 2024.

The Center appointed Taras Kyslyy as the sole panelist in this matter on January 11, 2024. 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 industry since May 1876. Over the years the Complainant has been at the forefront of significant medical breakthroughs, introducing dozens of widely used drugs.

The Complainant is using its LILLY trademark since 1895, having it registered in various jurisdictions, including, for instance the US trademark registration No. 1,226,434, registered on February 8, 1983, and Finnish trademark registration No. 34719, registered on January 28, 1960.

The Complainant also has an Internet presence, primarily through the website accessed by the domain name <lilly.com>, registered on May 10, 1991.

The disputed domain names were registered on October 3, 2023, and resolved to websites with identical design prominently featuring the Complainant's trademark and suggesting to log on providing user's phone number and password. .

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are identical or confusingly similar to the Complainant's trademark. The disputed domain names consist of the well-known LILLY mark, followed by the production term "bto", the technological term "itx," and the common term "yes," together with the generic Top-Level Domain ("gTLD") ".com". The relevant portion of the disputed domains is the well-known LILLY mark followed by non-distinctive and common terms. In particular, "bto" (as incorporated into <lillybto.com>) is an abbreviation for the "build to order" production methodology, "itx" (as incorporated into <lillyitx.com>) is an abbreviation for the "information technology extended" computer chip form factor, and the term "yes" is a common affirmative word in the English language. With the exception of the gTLD and the descriptive or common terms "bto," "itx," and "yes," the disputed domain names consist solely of the Complainant's LILLY mark. Thus, all of the disputed domain names are confusingly similar to the Complainant's LILLY trademark.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain names. There is no evidence that the Respondent is commonly known by the terms "lillybto," "lillyitx," or "lillyyes." In addition, the Respondent is neither using the disputed domain names in connection with the *bona fide* offering of goods and services nor making a legitimate noncommercial or fair use of the disputed domain names. Instead, the disputed domain names resolve to imposter websites where the Respondent is fraudulently using it to impersonate the Complainant when accessed on an iOS mobile device. This fraudulent use of the disputed domain names is part of an ongoing scheme, and the Complainant has previously filed two Complaints against a total of four domains that were used in an identical fashion. By using the Complainant's trademark in the disputed domain names, the Respondent is impersonating the Complainant in an apparent phishing attempt that is designed to disrupt the Complainant's operations and gain information and compensation from unsuspecting Internet users, who would be under the false impression that they were dealing with the Complainant. Such use does not demonstrate a legitimate right or interest in the disputed domain names. The Respondent's use of the disputed domain names is not otherwise justified by the principle that a mark may be used legitimately without its owner's consent to promote a *bona fide* offering of goods or services placed on the market by its owner.

The Complainant has not given the Respondent permission, authorization, consent or license to use its marks.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith. The Complainant's trademark is well-known, and because of the Respondent's fraudulent conduct, it is certain that the Respondent knew of the Complainant's trademark at the time of registering the confusingly similar disputed domain names. When accessed by iOS mobile devices, the disputed domain names resolve to login pages that are intended to mimic the Complainant's login page and therefore impersonate the Complainant and trick users into providing sensitive and personal data. The Respondent is using the Complainant's trademark in the disputed domain names to impersonate the Complainant in an apparent attempt to disrupt Complainant's operations and collect information from unsuspecting Internet users. Such use is clear evidence that the Respondent registered the disputed domain names in bad faith. The Respondent has been engaged in a pattern of registering domain names featuring the Complainant's trademark for commercial gain, which further confirms the disputed domain names were registered and are used in bad faith. The disputed domain names are confusingly similar to the Complainant's well-known trademark, and the Respondent has no relationship to the Complainant or its trademark.

B. Respondent

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

6. Discussion and Findings

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.

The 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 entirety of the LILLY mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "bto" in <lillybto.com>, "itx" in <lillyitx.com>, and "yes" in <lillyyes.com> may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The applicable gTLD in a domain name (such as ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The available evidence does not confirm that the Respondent is commonly known by the disputed domain names, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent, thus no actual or contemplated *bona fide* or legitimate use of the disputed domain names could be reasonably claimed (see, e.g., *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#)).

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off the Complainant and illegal collection of personal data, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent used the disputed domain names for websites prominently featuring the Complainant’s trademark creating the false impression these belong to the Complainant. The Panel finds that such use of the disputed domain names confirms the Respondent knew and targeted the Complainant and its trademark when registering and using the disputed domain names, which amounts to bad faith. [WIPO Overview 3.0](#), section 3.2.2.

The mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Panel is convinced that the Complainant’s trademark is well established through long and widespread use and the Complainant has acquired a significant reputation and level of goodwill in its trademark both in the United States and internationally. Thus, the Panel finds that the disputed domain names confusingly similar to the Complainant’s trademark were registered in bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Panels have held that the use of a domain name for illegal activity here, claimed impersonation/passing off the Complainant and illegal collection of the users personal data constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain names constitute bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <lillybto.com>, <lillyitx.com>, and <lillyyes.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: January 24, 2024