

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Muhammad Shoab
Case No. D2023-5157

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 Muhammad Shoab, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <mounjaromexicopharmacy.org> is registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 11, 2023. On December 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 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 December 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 January 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 31, 2024.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on February 13, 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 is a pharmaceutical company and commercializes since 2022 a pharmaceutical preparation for the treatment of diabetes under the brand MOUNJARO. According to the Complainant's documented and undisputed allegations, by the third quarter of 2023, the product MOUNJARO already produced nearly USD three billion in revenue worldwide. It's important to note that according to the Complainant, the product MOUNJARO is only available at physician's prescription and has not been approved or authorized for sale or use in Mexico.

It further results from the Complainant's documented allegations, which remained undisputed, that the Complainant is the proprietor of a portfolio of trademark registrations consisting of the verbal element MOUNJARO in many countries and territories worldwide, including Mexico, to which the disputed domain name refers. In particular, the Complaint is based on the following registered trademarks:

- United States trademark registration for MOUNJARO No. 6,809,369, registered on August 2, 2022 for goods in class 5;
- Mexican trademark registration for MOUNJARO No. 2117473, filed on July 13, 2020 and registered on September 2, 2020 for goods in class 5.

The Respondent registered the disputed domain name on September 11, 2023.

Finally, the Complainant has provided – undisputed – evidence demonstrating that the disputed domain name resolves to a website which mimics the Complainant's website by prominently displaying the Complainant's trademark and using the Complainant's copyright-protected images without its permission. In addition, that website purports to offer original MOUNJARO pharmaceutical preparations without prescription and for allegedly significantly discounted prices ("SAVE UP TO 90%") in Mexico, where the product is not authorized to be commercialized.

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 name.

Notably, the Complainant contends that:

- (i) the disputed domain name is confusingly similar to its trademark MOUNJARO. The addition of geographic and descriptive terms does not prevent a finding of confusing similarity;
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent purports to offer the Complainant's own goods for sale but is notably marketing gray market goods or otherwise counterfeit goods. MOUNJARO brand product has only been approved for sale in a limited number of jurisdictions and in specified formats and it is not approved or authorized for sale or use in Mexico. Additionally, the confusion caused by the Respondent's failure to accurately disclose its lack of relationship with the Complainant is compounded by its failure to identify itself. In addition, a prior panel has agreed that the marketing of MOUNJARO brand products in jurisdictions where it is not legally available serves as evidence that the Respondent lacks rights or legitimate interests in the disputed domain name (See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*,

WIPO Case [D2023-3674](#)). Finally, the Complainant has not given the Respondent permission, authorization, consent or license to use its mark;

- (iii) the Respondent's registration and use of the disputed domain name constitutes bad faith. According to the Complainant, Respondent is using the Complainant's mark to drive Internet traffic to its website under the disputed domain name in order to profit from the sale of gray market or otherwise counterfeit products, all while concealing its identity. Furthermore, using the disputed domain name to offer prescription products without a prescription, further supports a finding of bad faith. Moreover, the use of the Complainant's trademarks, misleads users into believing that there is an association between the Complainant and the website, and serves as evidence of an intentional attempt to attract Internet users to the disputed domain name for commercial gain in bad faith by creating a likelihood of confusion with the Complainant's mark. Finally, the Respondent's use of the disputed domain name is potentially harmful to the health of many unsuspecting consumers who may purchase products advertised through the Respondent's website under the mistaken impression that they are dealing with the Complainant or an authorized distributor of the Complainant and, therefore, will be receiving safe and effective drugs approved by health authorities around the world.

B. Respondent

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

6. Discussion and Findings

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

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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., i.e., United States trademark registration for MOUNJARO No. 6,809,369 and Mexican trademark registration for MOUNJARO No. 2117473.

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

Although the addition of other terms here, “mexico” and “pharmacy” 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 name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 name. 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 name such as those enumerated in the Policy or otherwise.

- (i) First, it results from the Complainant’s uncontested evidence that the disputed domain name resolves to a website which mimics the Complainant’s website by prominently displaying the Complainant’s trademark and using the Complainant’s copyright-protected images without its permission. In addition, that website purports to offer original MOUNJARO pharmaceutical preparations without prescription and for allegedly significantly discounted prices (“SAVE UP TO 90%”) in Mexico, where the product is not authorized to be commercialized. In this Panel’s view, such use cannot be qualified as a bona fide offering of goods or services in accordance with paragraph 4(c)(i) of the Policy, since such use is likely to mislead Internet users. In particular, marketing pharmaceutical products in jurisdictions where it is not legally available and even without prescription can, in the Panel’s view, not constitute or support rights or legitimate interests. Furthermore, the Complainant’s uncontested allegations demonstrate that it has not authorized or licensed the Respondent’s use of the MOUNJARO trademarks for registering the disputed domain name which is confusingly similar to the Complainant’s trademark.
- (ii) Furthermore, the Panel notes that there is no evidence in the record or WhoIs information showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.
- (iii) Finally, the Panel notes that there is no evidence in the record either showing that the Respondent might be making a noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue pursuant to paragraph 4(c)(iii) of the Policy. In particular, the Panel considers it obvious that the Respondent wanted to mimic the Complainant’s original website under the disputed domain name which entirely incorporates the trademark MOUNJARO. Noting the absence of any disclaimer and the impersonating nature of the website design, the disputed domain name’s content exacerbates the confusion caused by the incorporation of the Complainant’s trademark in the construction of the disputed domain name by further impersonating the Complainant. Accordingly, further to section 2.8 of the

[WIPO Overview 3.0](#), the Respondent's use of the disputed domain name to host an impersonating webstore excludes any bona fide offering, noncommercial, or fair use of the disputed domain name from the outset.

Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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.

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. In the present case, the Panel notes that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand:

It results from the documented and undisputed evidence provided by the Complainant that the disputed domain name resolves to a website mimics the Complainant's website by prominently displaying the Complainant's trademark and using the Complainant's copyright-protected images without its permission. In addition, that website purports to offer original MOUNJARO pharmaceutical preparations without prescription and for allegedly significantly discounted prices ("SAVE UP TO 90%") in Mexico, where the product is not authorized to be commercialized. However, the Complainant has not given any authorization for such use and is not linked to the Respondent or its website. For the Panel, it is therefore evident that the Respondent positively knew and targeted the Complainant's trademarks and products. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark MOUNJARO entirely when it registered the disputed domain name. Registration of a domain name which contains a third party's trademark, in awareness of said trademark and in the absence of rights or legitimate interests is suggestive of registration in bad faith (see e.g., *Vorwerk International AG v. ayoub lagnadi, Lagnadi LTD*, WIPO Case No. [D2022-1592](#) with further references). While the ability to purchase the goods from the Respondent's website is not known to the Panel, the alleged commercial offering and impersonation of the Complainant is sufficient to establish the Respondent's bad faith intent to mislead Internet users.

In addition, the finding of bad faith registration and use is supported by the following further circumstances resulting from the case at hand:

- (i) the trademark MOUNJARO is fully incorporated in the disputed domain name, plus the terms "Mexico" and "pharmacy" related to the Complainant's business. At the date the Respondent registered the disputed domain name, said mark existed and had generated impressive revenues of nearly USD three billion;
- (ii) the Respondent's failure to provide any evidence of actual or contemplated good-faith use;

the absence of any disclaimer on the website, the impersonating nature of the website design. 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 name <mounjaromexicopharmacy.org> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: February 27, 2024