

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. ibrahim Keskin
Case No. D2023-5179

1. The Parties

The Complainant is Eli Lilly and Company, United States of America, represented by Faegre Drinker Biddle & Reath LLP, United States of America.

The Respondent is ibrahim Keskin, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <mounjaroturkiye.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 13, 2023. On December 13, 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 Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 14, 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 14, 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 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default January 11, 2024.

The Center appointed Andrea Jaeger-Lenz as the sole panelist in this matter on January 17, 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 seated in the United States of America. The Complainant's products include an injectable, prescription-only medicine for the treatment of type 2 diabetes which is marketed under the band MOUNJARO launched after its approval by the United States Food and Drug Administration ("FDA") in May 2022. In the first half of 2023, The Complainant's sales of MOUNJARO branded products amounted to over USD 1.5 billion worldwide. The product is popular also for slimming purposes. The Complainant owns several trademark registrations around the world for MOUNJARO, including the following (Annex 7 to the Complaint):

United States trademark registration no. 6,809,369 MOUNJARO (word), registered on August 2, 2022, for goods in Class 5;

European Union trademark registration no. 018209187 MOUNJARO (word), registered on September 8, 2020, for goods in Class 5;

Turkish trademark registration no. 2020 35999 MOUNJARO (word), registered on December 5, 2020, for goods in Class 5.

The Complainant advertises and provides information on the MOUNJARO medicine, amongst others, by way of a website under the domain name <mounjaro.com>, which was registered by the Complainant on October 21, 2019, and used since its approval by the FDA since May 17, 2022.

The disputed domain name was registered on August 4, 2023, using a privacy service (Annex 1 to the Complaint). It resolved to a website with an alleged order line for MOUNJARO slimming injections in Türkiye using the picture of a MOUNJARO shipment and a Turkish mobile phone number. There is no indication on the identity and contact details of the person responsible on the website (screenshot in Turkish with translation into English in Annex 11 to the Complaint).

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 it owns trademark rights around the world in the MOUNJARO mark that predate the registration of the disputed domain name. After its launch in June 2022 the product became an instant success which is mirrored by the USD 280 million in revenues by the end of 2022 (Annex 4 to the Complaint). The Complainant puts forth that its MOUNJARO trademark is a phantasy word which is not only distinctive but widely recognized. It states that the disputed domain name consists of the distinctive MOUNJARO mark together with the geographically descriptive term "turkiye" and the generic Top-Level Domain ("gTLD") ".com", which, however, must be disregarded. The Complainant argues that the addition of a geographic term does not prevent a finding of confusing similarity. The fact that the disputed domain name incorporates the distinctive MOUNJARO mark in its entirety renders it confusingly similar with the MOUNJARO trademark, in which the Complainant owns rights.

On the second element, the Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, there is no evidence that the Respondent is

commonly known by the disputed domain name. It is not using the disputed domain name in connection with a bona fide offering of goods nor making a legitimate noncommercial or fair use of it. Rather, The Respondent has used a privacy shield to hide its identity and to direct Internet traffic to a website that sells gray market or potentially counterfeit versions of the Complainant's MOUNJARO branded product for sale in Türkiye via telephone, displaying a photo of such products and promoting its weight loss benefits. The Complainant has not consented to such use of the trademark, and its consent is not obsolete either given that the requirements as outlined in *Oki Data Americas v. ASD, Inc.*, WIPO Case No. [D2002-0903](#) are not met in the present case. In particular, the Respondent fails to disclose its relationship with the Complainant and causes confusion among Internet users. In addition, a prior Panel has agreed that the marketing of MOUNJARO products in jurisdictions where it is not legally available serves as evidence for lack of rights or legitimate interests (*Eli Lilly and Company v. Shoab Manzoor, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#)). In the present case, the MOUNJARO product has, according to the Complainant, not been approved or authorized for sale in Türkiye. In contrast, the website, to which the disputed domain name resolves, makes no mention that a prescription is required to purchase the product. Lastly, the Respondent had constructive notice of the Complainant's MOUNJARO trademark due to its multiple registrations throughout the world. There is no plausible reason for the Respondent to register the disputed domain name other than to capitalize on the Complainant's goodwill in the trademark.

On the third element, the Complainant contends that the disputed domain name is registered and being used in bad faith. The MOUNJARO trademark is widely recognized. Thus, there can be no doubt that the Respondent registered the disputed domain name with knowledge of the Complainant's rights, particularly as the Respondent purports to sell the Complainant's products. This itself is indicative of bad faith. Further, evidence of bad faith registration and use is shown, when a domain name is used to utilize another's well-known trademark for attracting Internet users to its website for commercial gain, which - according to the Complainant - is precisely what the Respondent is using the disputed domain name for by offering MOUNJARO products which are gray market or counterfeit and, in any event, not approved for sale in Türkiye. Due to the "blockbuster" success of the MOUNJARO product and the repute of the trademark, the website, to which the disputed domain name resolves, misleads users into thinking there is a relationship between the Respondent and the Complainant. The Respondent, so the Complainant closes its argument, has opportunistically registered and used the disputed domain name for commercial gain, which is all the more to be disapproved due to the potentially harmful effect of the product on unsuspecting consumers' health.

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

The addition of the term “turkiye”, being the word for the country Türkiye and thus merely a geographical term, 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.

Panels have held that the use of a domain name for illegal activity, here, claimed sale of gray market or counterfeit pharmaceuticals to Internet users or illegal pharmaceuticals, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, the nature of the disputed domain name carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant has to establish that the disputed domain name has been registered and is being used in bad faith by the respondent.

In the present case, the Panel notes that the Complainant’s rights in the trademark MOUNJARO predate the Respondent’s registration of the disputed domain name on August 4, 2023. Based on the evidence provided by the Complainant regarding the instant blockbuster success since mid 2022 and according reputation of its MOUNJARO trademark, and the absence of any evidence to the contrary on the part of the Respondent, the Panel agrees with the Complainant that it is inconceivable that the Respondent had not been aware of the Complainant’s trademarks at the time of registration of the disputed domain name, but, rather, directly targeted the Complainant’s trademark.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that shall be evidence of the registration and use in bad faith, among them (iv) that by using the domain name, to intentionally attempt to attract, for commercial gain, Internet users to the respondent’s website or other online location, by creating a likelihood of confusion the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of his website or location of a products or service on his website or location. Given the evidence produced by

the Complainant, it is clear to the Panel that the Respondent has used the disputed domain name in order to advertise and sell products by profiting from the reputation of the MOUNJARO trademark. In addition to this, Panels have held that the use of a domain name for illegal activity constitutes bad faith, [WIPO Overview 3.0](#), section 3.4. In this vein, in particular the sale of gray market or counterfeit pharmaceuticals, even though these have neither been authorized or allowed for sale in Türkiye, with potentially harmful health effects on the Respondent's customers as claimed by the Complainant, deepens the reproach of use of the disputed domain name in bad faith.

Finally, the fact that the Respondent has not participated in these proceedings and leaves allegations that are as serious as those of the Complainant unrebutted, further supports a finding that the disputed domain name was registered and is being used in bad faith (see also *Confederation Nationale du Credit Mutuel v. WhoisGuard Protected, WhoisGuard, Inc, / Jean Duca*, WIPO Case No. [D2021-0977](#); *TTT Moneycorp Limited v. Diverse Communications*, WIPO Case No. [D2001-0725](#); *The Commissioners for HM Revenue and Customs v. Calvin Bonsu*, WIPO Case No. [D2020-1075](#)).

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 <mounjaroturkiye.com> be transferred to the Complainant.

/Andrea Jaeger-Lenz/

Andrea Jaeger-Lenz

Sole Panelist

Date: January 30, 2024