

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Gowell Delivery
Case No. D2023-5200

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 (“United States”).

The Respondent is Gowell Delivery, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <lillymedicals.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 13, 2023. On December 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 15, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 22, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 16, 2024.

The Center appointed Steven M. Auvil as the sole panelist in this matter on January 26, 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

According to the Complaint, the Complainant, Eli Lilly and Company, is a pharmaceutical company founded in May 1876 by Colonel Eli Lilly, in Indianapolis, Indiana. The Complainant began using the LILLY mark as early as February 1, 1895.

According to the Complaint, the Complainant owns trademarks and service marks in connection with the LILLY brand, including, United States Registration No. 1226434 (registered February 8, 1983). The Complainant owns approximately 178 other registrations of the LILLY mark covering 114 countries around the world. The Complainant also owns approximately 107 registrations of the LILLY logo mark.

The Complainant also owns and uses the domain name <lilly.com>.

The disputed domain name <lillymedicals.com> was registered on April 6, 2023. According to the Complaint, the disputed domain name resolves to a website that displays no active content, other than a website index that leads to a page that displays a “403 Forbidden” notice.

According to the Complaint, the Respondent is using the disputed domain name to email fraudulent job offers and collect financial information.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to its LILLY mark because it consists of the term “lilly” with the descriptive term “medicals.” The Complainant contends that the relevant portion of the disputed domain name is the well-known LILLY mark followed by the descriptive term “medicals” that does not mitigate confusing similarity.

The Complainant also asserts that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent is not commonly known by the disputed domain name. The Complainant also alleges that the Respondent is not using the disputed domain name in connection with the bona fide offering of goods and services nor is the Respondent making legitimate noncommercial or fair use of the disputed domain name. The Complainant alleges that the disputed domain name resolves to a website that displays no active content, other than a website index that leads to a page that displays a “403 Forbidden” notice. Further, the Complainant alleges that the Respondent is using the disputed domain name to impersonate the Complainant and send emails to potential job applicants in an apparent phishing scheme to deceive consumers.

The Complainant further asserts that the Respondent registered and used the disputed domain name in bad faith as the Respondent has used the disputed domain name “to email job-seeking individuals fraudulent job offers” and to collect the personal and financial information from individuals. The Complainant asserts that the Respondent’s registration of the disputed domain name and use was in order to disrupt the Complainant’s business by using the “[...]@lillymedicals.com” email address to impersonate the Complainant and send emails in furtherance of a scam.

The Complainant requests that the disputed name be transferred to the Complainant.

B. Respondent

The Respondent did not file a Response to the Complaint or otherwise answer the Complainant’s contentions.

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “[a] Panel shall 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 directs that the Complainant must prove each of the following to obtain relief:

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

In view of the Respondent’s failure to submit a Response, the Panel is entitled to accept as true the allegations set forth in the Complaint, unless the evidence is clearly contradictory, and to derive reasonable inferences from the evidence presented. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#).

Based on the foregoing guidance, the Panel makes the following findings and conclusions based on the allegations and evidence contained in the Complaint and reasonable inferences drawn from the evidence presented.

A. Identical or Confusingly Similar

The 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 evidence submitted by the Complainant supports the conclusion that the Complainant has protectable rights in the LILLY mark. [WIPO Overview 3.0](#), section 1.2.1. The Complainant has used the LILLY mark since 1895 and registered the LILLY mark in 1983.

As set forth in [WIPO Overview 3.0](#), section 1.7, when the entirety of a mark is reproduced within the disputed domain name, or “at least a dominant feature of the relevant mark is recognizable in the domain name,” the disputed domain name is confusingly similar to the mark for the purposes of the Policy. Further, section 1.8 of [WIPO Overview 3.0](#) states that “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”

Here, the disputed domain name incorporates the entire LILLY mark followed by the term “medical,” and the generic Top-Level Domain (“gTLD”) “.com.” The Respondent’s addition of the term “medical” to the Complainant’s LILLY mark in the disputed domain name does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.8; see also *Eli Lilly and Company v. Domains By Proxy, LLC / Name Redacted*, WIPO Case No. [D2022-0065](#) (the addition of the term “group” does not negate a finding of confusing similarity); *Lilly ICOS LLC v. Ronald Bode*, WIPO Case No. [D2006-0366](#) (the addition of the word “medical” does not negate a finding of confusing similarity).

Further, as set forth in section 1.11.1 of [WIPO Overview 3.0](#), the applicable gTLD (e.g., “.com”, “.site”, “.info”, “.shop”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. As such, the use of “.com” in the disputed domain name has no bearing on establishing identity or confusing similarity here. See *Calzaturificio Casadei S.p.A. v. Nancy Salvaggio*, WIPO Case No. [D2019-2329](#); *Ally Financial Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-2037](#).

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 record, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Complainant has not licensed or otherwise authorized the Respondent’s use of the LILLY mark as a domain name, nor does the Complainant have any affiliation, association, sponsorship, or connection with the Respondent. The Respondent 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.

Furthermore, the nature of the disputed domain name, incorporating the Complainant’s LILLY mark in its entirety combined with the term “medicals” related to the Complainant’s service, carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1

Under the circumstances, the Panel finds that the Respondent, in fact, has no rights or legitimate interests in the disputed domain name and that the second element of paragraph 4(a) of the Policy is satisfied.

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 exemplary circumstances that, if found by the Panel to be present, is evidence of the registration and use of a domain name in bad faith.

Section 3.1.4 of [WIPO Overview 3.0](#) provides that “[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.” Additionally, section 3.2.1 of [WIPO Overview 3.0](#) provides that “[p]articular circumstances panels may take into account in assessing whether the respondent’s registration of a domain name is in bad faith include: (i) the nature of the domain name (e.g., a typo of a widely-known mark, or a domain name incorporating the complainant’s mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant’s area of activity or natural zone of expansion) [...] (vi) a clear absence of rights or legitimate interests coupled with no credible explanation for the respondent’s choice of the domain name, or (viii) other indicia generally suggesting that the respondent had somehow targeted the complainant.”

In the present case, the Panel notes that the Respondent copied the widely-known LILLY trademark and included the term “medicals” in the disputed domain name. This creates a risk of implied affiliation.

Further, panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case, phishing and impersonation/passing off, 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 name constitutes bad faith under the Policy. Indeed, the Respondent is using the disputed domain name to

impersonate the Complainant and send emails to potential job applicants in an apparent phishing scheme to deceive consumers.

The Panel finds that the Complainant has established the third element of the Policy, registration and use of the disputed domain name in bad faith.

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 <lillymedicals.com> be transferred to the Complainant.

/Steven Auvil/

Steven Auvil

Sole Panelist

Date: February 15, 2024