

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Nancy Toney
Case No. D2024-0115

1. The Parties

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

The Respondent is Nancy Toney, United States.

2. The Domain Name and Registrar

The disputed domain name <mounjaroozempicpens.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2024. On January 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 15, 2024, 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 January 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 7, 2024.

The Center appointed William F. Hamilton as the sole panelist in this matter on February 14, 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 owns United States Patent and Trademark Office Registration No. 6,809,369, dated August 2, 2022, for the trademark MOUNJARO (the “Mark”). The Complainant currently owns at least 90 registrations for the Mark in 60 countries. Numerous additional applications are pending. The Complainant has owned and operated the website “www.mounjaro.com” since May 17, 2022.

The United States Food and Drug Administration announced its approval of MOUNJARO brand product for use in connection with injectable pharmaceutical products for treating type 2 diabetes on May 13, 2022. The Complainant’s Mark branded product generated USD 1.5 billion in revenue sales during the first half of 2023.

The Respondent registered the disputed domain on May 24, 2023. The disputed domain resolves to a website prominently featuring the Mark and offering the Complainant’s numerous pharmaceutical products and medications and other third-party products with discount.

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. The Complainant asserts the disputed domain name is confusingly similar to the Mark because the disputed domain name is composed by adding the third-party trademark OZEMPIC and the word “pens” to the Mark. The Complainant asserts that the Complainant never authorized the Respondent to use the disputed domain name, that the Respondent is not generally known by the disputed domain name, never operated a business under the disputed domain name, has not advertised the disputed domain name, and never engaged in any bona fide commercial activity in connection with the disputed domain name. The Complainant asserts that the Respondent obviously knew of the Mark and has registered and used the disputed domain name in bad faith to attract unsuspecting Internet users to its website for commercial benefit selling grey market or counterfeit products.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was 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 the Complainant has shown rights in the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the Complainant’s Mark is reproduced within the disputed domain name.

Accordingly, the disputed domain name is confusingly similar to the Mark. [WIPO Overview 3.0](#), section 1.7. Adding the third-party trademark OZEMPIC and the term “pens” to the Mark in the disputed domain name does not prevent a finding of confusing similarity between the disputed domain name and the Mark. [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.

The Complainant never authorized the Respondent to use the disputed domain name and there is no evidence that the Respondent is generally known by the disputed domain name or engaged in any bona fide commercial activity in connection with the disputed domain name.

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 disputed domain name resolves to a commercial website selling likely grey market or counterfeit versions of the Complainant’s prescription pharmaceutical and cosmetic products as well as other third-party products with discount. 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.

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 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 finds that the Respondent has knowingly registered and used the disputed domain name fully cognizant of the Complainant’s invented Mark with the goal of attracting unsuspecting Internet users to the Respondent’s website for commercial gain by creating a likelihood that Internet users will believe the products offered for sale at the Respondent’s website are approved, sponsored, or endorsed by the Complainant. Noting the Complainant’s MOUNJARO brand product is only available on a physician’s prescription, the Respondent’s use of the disputed domain name offering what are likely to be grey market or counterfeit versions of the Complainant’s numerous pharmaceutical products and third-party products with discount to engage in fraudulent or illegal conduct also establishes bad faith registration and use. [WIPO Overview 3.0](#), section 3.4.

Based on the available record, 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 <mounjaroozempicpens.com> be transferred to the Complainant.

/William F. Hamilton/

William F. Hamilton

Sole Panelist

Date: February 21, 2024