

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Abdul Rauf Raza

Case No. D2024-0364

1. The Parties

The Complainant is Eli Lilly and Company, United States of America (“United States”), represented by Faegre Baker Daniels LLP, United States.

The Respondent is Abdul Rauf Raza, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <buymounjaronlinecanada.com> is registered with Sea Wasp, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2024. On January 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 30, 2024, 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 (Jewella Privacy - 8228b Jewella Privacy LLC Privacy ID#1280630) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 31, 2024, 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 January 31, 2024.

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 February 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 26, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on March 4, 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 an American pharmaceutical company headquartered in Indianapolis, Indiana. Mounjaro is one of the Complainant's products.

The United States Food and Drug Administration announced the approval of MOUNJARO brand product for use in connection with injectable pharmaceutical products for the treatment of type 2 diabetes on May 13, 2022. The Complainant launched the product in June 2022, and, by the end of 2022, the product produced nearly two-hundred and eighty million United States dollars in revenue worldwide.

The Complainant holds ninety (90) registrations for MOUNJARO mark (or its foreign language equivalents) across sixty (60) countries and twenty-four (24) registrations for MOUNJARO logo across twenty-two (22) countries, such as the following:

- the United States trademark registration number 6809369 for MOUNJARO (word), filed on November 5, 2019, and registered on August 2, 2022, for goods in International class 5;
- the European Union trademark registration number 018209187 for MOUNJARO (word), filed on March 11, 2020, and registered on September 8, 2020, for goods in International class 5; and
- the Korean trademark registration number 40-1718914 for MOUNJARO (word), filed on March 25, 2020, and registered on April 22, 2021, for goods in International class 5.

The Complainant owns the domain name <mounjaro.com> registered on October 21, 2019.

The disputed domain name was registered on July 25, 2023, and, at the time of filing the Complaint, it was used in connection with a commercial website, offering for sale purported MOUNJARO branded products without prescription, also attempting to impersonate the Complainant by prominently displaying the Complainant's MOUNJARO mark and logo, using the Complainant's copyright-protected images, and failing to disclose the Respondent's lack of a relationship with the Complainant.

The Complainant's MOUNJARO brand product is available only on a physician's prescription and is manufactured, labeled and sold in strict compliance (including in specified formats) with the health authority laws and regulations.

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 MOUNJARO is an invented word which is widely recognized to designate the Complainant's pharmaceutical product; the disputed domain name is identical or confusingly similar to its trademark, adding to the MOUNJARO mark the geographical and/or descriptive terms "canada", "buy", and "online"; that the Respondent has no rights or legitimate interests in the disputed domain name; that the Respondent registered and is using the disputed domain name in bad faith, in connection with a

website marketing only grey market or alleged counterfeit goods because the MOUNJARO brand product is not available for worldwide distribution, nor in Canada in the auto-injector format promoted on the website under the disputed domain name, requires a prescription to purchase regardless of format or jurisdiction, and is not offered with a 90% discount, all while attempting to impersonate the Complainant, by prominently displaying the Complainant's trademark, logo and copyrighted images, without any disclaimer.

Furthermore, the Respondent has engaged in a pattern of bad faith conduct, in particular it has registered at least one other domain name containing Complainant's MOUNJARO mark. See *Eli Lilly and Company v. Abdul Rauf Raza*, WIPO Case No. [D2023-4937](#).

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities 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 the disputed domain name; and
- (iii) the disputed domain name has been 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.

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.

Although the addition of other terms, here "buy", "online", "canada", 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 non-exhaustive 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.

According to the evidence, the Respondent has used the disputed domain name in connection with a website promoting and offering for sale goods identical to those of the Complainant with significant price reductions, without complying with the relevant regulations (such as a physician's prescription and taking account of the jurisdictions where the product is legally approved for distribution), displaying the Complainant's trademark, logo and official product images, without providing any accurate or prominent disclaimer. Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Further, the composition of the disputed domain name which combines the Complainant's trademark with a geographical term and additional terms indicating that the disputed domain name is used to sell the Complainant's goods online, suggests an affiliation with the trademark owner. UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [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

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 registered the disputed domain name in bad faith since the MOUNJARO mark is highly distinctive and has acquired significant recognition in the pharmaceutical field. Further, the use of the disputed domain name enforces such finding.

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.

Paragraph 4(b)(iv) of the Policy provides that the use of a 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 with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark with additional geographical, or additional terms, the website operated under the disputed domain name displays the Complainant's trademark and logo, product images, providing very likely counterfeit versions of the Complainant's products, indeed in this Panel's view, the Respondent has intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated with or related to the Complainant, for the

Respondent's commercial gain. This activity may also disrupt the Complainant's business, tarnish its trademark, and may put the safety of patients at risk.

According to the amended Complaint, as detailed in Section 5.A above, the Respondent appears to be the registrant of at least one other domain name comprising the Complainant's MOUNJARO trademark. Paragraph 4(b)(ii) of the Policy provides another circumstance of bad faith registration and use when the respondent registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. UDRP panels established that a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration, including directed at the same brand owner. See section 3.1.2 of the [WIPO Overview 3.0](#). In the case *Eli Lilly and Company v. Abdul Rauf Raza* supra. the Respondent registered the domain name <mounjarouk.org> one day before the date of the disputed domain name and has used it in a similar manner, to impersonate the Complainant and to sell pharmaceuticals or alleged counterfeit goods.

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 <buymounjaroonlinecanada.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: March 18, 2024