

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Aleksandr vasilev  
Case No. D2024-0375

### **1. The Parties**

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

The Respondent is Aleksandr vasilev, Germany.

### **2. The Domain Name and Registrar**

The disputed domain name <mounjaro.icu> is registered with Hostinger Operations, UAB (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 (Domain Admin Privacy Protect, LLC) 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 Mihaela Maravela as the sole panelist in this matter on March 5, 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 information in the Complaint, the Complainant is a pharmaceutical company established in the United States. The Complainant is using the trademark MOUNJARO in association with pharmaceutical preparations for the treatment of diabetes. The Complainant launched the product in June 2022, and by the end of 2022, the product produced nearly two-hundred and eighty million dollars in revenue, which increase continuously. Competent authorities have approved MOUNJARO brand product for distribution in various formats in the following countries outside the United States, namely: Australia, Canada, Germany, Japan, Kuwait, Poland, Saudi Arabia, Switzerland, the United Arab Emirates, and United Kingdom.

The Complainant is the holder of a large number of trademarks for MOUNJARO, including the United States trademark No. 6,809,369 for MOUNJARO (word) registered on August 2, 2022, for goods in class 5, the United States trademark No. 7,068,463 for MOUNJARO (word) registered on May 30, 2023, for services in class 44 or the European Union trademark No. 018209187 for MOUNJARO (word) registered on September 8, 2020, for goods in class 5. Also, the Complainant has registered the domain name <mounjaro.com> on October 21, 2019, which it uses to advertise and provide information regarding its MOUNJARO brand product.

The disputed domain name was registered on November 24, 2023, and does not resolve to an active website at the date of the Decision. According to evidence with the Complaint, the disputed domain name resolved at the date of the Complaint to a website purporting to sell the Complainant's MOUNJARO brand product in Russian Federation ("Russia"), displaying the Complainant's MOUNJARO word and figurative trademark and product images, as well as purporting to sell third-party competitive products.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical with its highly distinctive trademark MOUNJARO.

As regards the second element, the Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that the Respondent is commonly known by the disputed domain name. In addition, the Respondent is neither using the disputed domain name in connection with a bona fide offering of goods and services nor making a legitimate noncommercial or fair use of the disputed domain name. Instead, the Respondent has registered the disputed domain name utilizing a privacy-shielding service to direct Internet traffic to a website that sells gray market or potentially counterfeit versions of the Complainant's MOUNJARO brand product in Russia, where the product has not been legally approved for distribution (and therefore a prescription cannot be legally obtained). These gray market (or otherwise counterfeit) products are sold alongside third-party competing prescription medications. The Complainant argues that the Respondent carries out these activities without disclosing the Respondent's lack of a relationship with the Complainant, while stating on the website at the disputed domain name that "[.] the innovative drug mounjaro (sic) is already in Moscow[.]" falsely implying that it is a legitimate supplier of Mounjaro brand product in Russia."

The Complainant further argues that the top of the website at the disputed domain name merely includes a logo for “Medtech,” with no further indication what organization might be behind the site or that such an entity even exists. There is no address or other contact information provided, no copyright statement or other identification of who operates the website. The Complainant contends that the failure to accurately identify the website operator is further evidence of a lack of rights or legitimate interests.

With respect to the third element, the Complainant argues that it has extensively marketed its MOUNJARO brand product in the United States and other jurisdictions around the world and its trademark is widely recognized. The Respondent is purporting to sell the Complainant’s goods (albeit in a jurisdiction where it is not legally approved for distribution and prescriptions cannot be obtained) under the disputed domain name which is, in itself, indicative of bad faith registration and use. The Respondent is using the disputed domain name to offer prescription-only products where prescriptions are not legally available, which further supports a finding of bad faith, given also the potentially harmful impact to the health of many unsuspecting consumers. In addition, the Complainant argues that the Respondent has not only acted in bad faith but has engaged in a pattern of such conduct, as the Respondent has registered at least one other domain name containing third party trademarks which was the subject of a UDRP proceeding.

## **B. Respondent**

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

## **6. Discussion and Findings**

No response has been received from the Respondent in this case. Accordingly, the Panel considers it can proceed to determine the Complaint based on the statements and documents submitted by the Complainant as per paragraph 15(a) of the Rules. The applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”, and the Panel can draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 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 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 Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7

It is the settled view of panels applying the Policy that the Top-Level Domain (“TLD”) (here “.icu”) should be disregarded under the first element test.

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.

The disputed domain name appears to have been used for the purposes of selling the prescription medicine MOUNJARO along with third party competing prescription medications. The Complainant denies extending an authorization or license to the Respondent for such use. Also, the Complainant submitted that the MOUNJARO prescription medicine is not legally approved for distribution and prescriptions cannot be obtained in Russia. This Panel considers that the alleged sale of MOUNJARO brand product in jurisdictions where it is not authorized for sale, and could not in any event be purchased without prescription, does not equate to actually offering the goods at issue under the first element of the so called “Ok! Data test”. Also, third-party products are offered alongside the Complainant’s branded products and there is no disclaimer as to the lack of any relationship between the Respondent and the Complainant, therefore the second and the third elements of the “Ok! Data test” are also not fulfilled. (See [WIPO Overview 3.0](#), section 2.8).

Moreover, the use of a domain name for sale of illegal pharmaceuticals can never confer rights or legitimate interests on a respondent (see [WIPO Overview 3.0](#), section 2.13.1).

In addition, the nature of the disputed domain name, which is identical to the Complainant’s MOUNJARO trademark, carries a high risk of implied affiliation with the Complainant (see [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.

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 Complainant’s trademark had been widely used and registered before the time of the disputed domain name registration. Given the distinctive character of the Complainant’s trademark, the identity between the disputed domain name and the Complainant’s trademark and also the prominent use of the Complainant’s trademark on the website at which the disputed domain

name resolved, along with product images, the Panel finds it more likely than not that the Respondent had the Complainant's mark in mind when registering the disputed domain name and targeted it.

As regards bad faith use, the Complainant demonstrated that the disputed domain name resolved at the time of the Complaint to a website prominently displaying the Complainant's trademark and purporting to sell counterfeit or gray market goods which appeared to be that of the Complainant or an affiliate or partner of the Complainant, in addition to third party competitive products. Under the circumstances of the case, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website (paragraph 4(b)(iv) of the Policy). Moreover, as mentioned above, this may amount to an illegal activity, especially since according to the unrebutted statements of the Complainant, the product has not been approved for distribution in Russia and cannot be sold without prescription. Panels have held that the use of a domain name for illegal activity – here, the illegal sale of pharmaceuticals or counterfeit goods constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

In the Panel's view, the circumstances of the case represent evidence of registration and use in bad faith of the disputed domain name. Although at the time of filing of the Decision, the disputed domain name is inactive, considering the circumstances of this case, the Panel finds that such non-use of the disputed domain names does not prevent a finding of bad faith under the doctrine of passive holding (see section 3.3 of the [WIPO Overview 3.0](#)).

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 <mounjaro.icu> be transferred to the Complainant.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: March 19, 2024