

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Josh Anderson, THC Bulk Supplies
Case No. D2024-0404

1. The Parties

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

The Respondent is Josh Anderson, THC Bulk Supplies, US.

2. The Domain Name and Registrar

The disputed domain name <mounjaro-uk.com> 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 29, 2024. On January 30, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 31, 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 February 2, 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 February 3, 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 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2024. The Respondent sent an email communication to the Center on February 2, 2024.

The Center appointed Purvi Patel Albers as the sole panelist in this matter on March 8, 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 international pharmaceutical company that owns multiple trademark registrations for MOUNJARO (the “Mark”) across sixty (60) countries around the world. The Complainant’s trademark portfolio includes US Registration No. 6,809,369 for MOUNJARO, registered on August 2, 2022, with priority dating back to November 5, 2019. The Complainant also owns United Kingdom Registration UK00003608193 for MOUNJARO, filed on March 11, 2021, and registered on July 16, 2021.

The United States Food and Drug Administration announced its approval of the MOUNJARO pharmaceutical, a prescription pharmaceutical product for the treatment of type 2 diabetes, on May 13, 2022. The Complainant launched the product in June 2022, and by the end that year, the product generated nearly USD 280 million in revenue worldwide.

The Complainant also has an Internet presence, primarily through its website at the domain name <mounjaro.com>. Complainant registered the domain name <mounjaro.com> on October 21, 2019, and uses it to advertise and provide information regarding its MOUNJARO pharmaceutical.

The disputed domain name was registered on September 15, 2023, and at the time of filing of the Complaint led to a website (the Website) that purportedly offered for sale the Complainant’s MOUNJARO product without a prescription. The Respondent also offered competing third party products on the Website.

Currently, the disputed domain name leads to an inactive website.

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.

B. Respondent

The Respondent did not reply to the Complainant’s contentions, however sent an email communication on February 2, 2024, indicating “All information of my domain is correct is there an issue with the domain?”. Despite being notified of the Complaint on February 6, 2024, no further communications were received from the Respondent.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which the Complainant must satisfy with respect to the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the record, 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 MOUNJARO 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 the term "uk", may bear on assessment of the second and third elements, the Panel finds the addition of such 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.

Finally, the generic Top Level-Domain ("gTLD") is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

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 or fraudulent activity, here claimed as sale of gray market or illegal pharmaceuticals, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Even if the products sold by the Respondent were genuine (which is highly unlikely given the prescription-basis through which such pharmaceuticals are sold), such use of the disputed domain name does not meet the "Okidata Test", because the site does not disclose the lack of relationship between the Respondent and the Complainant and also offers third party competing products. [WIPO Overview 3.0](#), section 2.8.

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.

Noting that that the Complainant's trademark predates the registration of the disputed domain name and considering that the disputed domain name resolves to a website featuring the Complainant's MOUNJARO mark and depictions of its as well as third party competitive products, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well-known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name resolved to a website that sells pharmaceutical products under the trademark MOUNJARO and thereby used the Complainant's logos and copyright-protected images without disclosing the Respondent's lack of a relationship with the Complainant. The impression given by this website would cause Internet users to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. The Panel holds that by using the disputed domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site in the sense of Policy, paragraph 4(b)(iv).

Moreover, Panels have held that the use of a domain name for illegal activity such as in the present case, selling prescription drugs without requiring a prescription and/or selling to countries where the pharmaceutical product does not have a marketing authorization, constitutes use in bad faith. [WIPO Overview 3.0](#), section 3.4. Despite the Respondent's recent removal of the illegal content from its website, Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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-uk.com> be transferred to the Complainant.

/Purvi Patel Albers/

Purvi Patel Albers

Sole Panelist

Date: March 22, 2024