

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. frank maxwel, all freen  
Case No. D2024-0412

### **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.

The Respondent is frank maxwel, all freen, Cameroon.

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

The disputed domain name <mounjarostore.com> is registered with Name.com, Inc. (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 February 1, 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 February 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2024.

The Center appointed Andrew Brown K.C. as the sole panelist in this matter on March 7, 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, Eli Lilly and Company, is a company organized under the laws of the State of Indiana, United States of America with a principal place of business in Indianapolis. The Complainant is a pharmaceutical manufacturer and sells pharmaceutical preparations worldwide.

The Complainant has a worldwide trademark portfolio of at least 90 trademarks comprising the word MOUNJARO. The most relevant trademarks (“the MOUNJARO Trademark”) owned by the Complainant and on which the Complaint is based are:

Country	No.	Mark	Class	Registration Date
United States of America	6809369	MOUNJARO	5	August 2, 2022
United States of America	7068463	MOUNJARO	44	May 30, 2023
United Kingdom	3608193	MOUNJARO	5	July 16, 2021
European Union	018209187	MOUNJARO	5	September 8, 2020

The Complainant also owns at least 24 registrations for the MOUNJARO logo in 22 countries.

The Complainant has an Internet presence using its MOUNJARO Trademark. The domain name <mounjaro.com> was registered by the Complainant on October 21, 2019, and has been used to identify a website since May 17, 2022.

The disputed domain name was registered on April 22, 2023. The address provided by the Respondent is in Cameroon. The disputed domain name currently hosts a website which offers pharmaceuticals for sale including MOUNJARO products and prominently uses the MOUNJARO Trademark.

#### 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 the disputed domain name is confusingly similar to the MOUNJARO Trademark in which it claims rights from the date of its initial trademark filing with the United States Patent and Trademark Office on November 5, 2019. The Complainant relies too on the US Food & Drug Administration public announcement of its approval of MOUNJARO branded product for the treatment of type 2 diabetes on May 13, 2022. The Complainant's subsequent launch of its MOUNJARO product was in June 2022. This was very successful and by the end of 2022 the product had produced nearly USD 280 million in revenue.

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, it states that:

- (a) 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 the bona fide offering of goods and services nor making a legitimate noncommercial or fair use of it. The Complainant states that the Respondent is falsely claiming to be an accredited pharmacy and it

appears to be using a false address. It further states that the Respondent is using the disputed domain name to direct traffic to a website selling either gray goods or potentially counterfeit versions of the Complainant's MOUNJARO product without a prescription.

- (b) The Complainant refers to the principles set out in the *Oki Data Americas, Inc v. ASD, Inc*, WIPO Case No. [D2001-0903](#) in relation to the circumstances where a mark may be legitimately used without the owner's consent to provide a bona fide offering of goods placed on the market by its owner. The Complainant asserts that the Respondent does not meet the criteria for this 'safe harbor'.
- (c) The Complainant says it has not given the Respondent permission, authorization, consent and/or license to use its mark.

Finally, the Complainant states that the disputed domain name was registered and is being used in bad faith. The Complainant relies on an earlier Panel finding that its MOUNJARO Trademark is distinctive and widely recognized and contends that in this case there can be no doubt that the Respondent registered the disputed domain name with the knowledge of the Complainant's rights to that trademark.

The Complainant further says that the disputed domain name was registered by the Respondent in order to utilize its well-known trademark to attract Internet users to a website for commercial gain – in this case profiting from the sale of counterfeit or gray market product.

The Complainant states further that the business address for the online pharmacy promoted in the text of the Respondent's website (appearing on the disputed domain name) appears to be non-existent.

The Complainant relies on four additional matters:

- (a) The use of the website at the disputed domain name to sell competitive products.
- (b) The Respondent's sale of prescription-only products without a prescription.
- (c) The Complainant's contention that the content of the website at the disputed domain name will mislead users into believing that there is an association between the Complainant and the website.
- (d) The Respondent's use of the Complainant's trademark in the website located at the disputed domain name is potentially harmful to the health of consumers who may purchase advertised products under the mistaken impression that they are dealing with the Complainant and will be receiving safe and effective pharmaceuticals approved by the health authorities.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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, the MOUNJARO Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the MOUNJARO mark is reproduced within the disputed domain name. The addition of the word “store” 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. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Panel also finds that the Respondent’s use of the disputed domain name is not justified by the principle that a mark may be used legitimately without its owner’s consent to promote a bona fide offering of goods based on the market by its owner: *Oki Data Americas, Inc v ASD, Inc*, WIPO Case No. [D2001-0903](#). This principle can only be invoked under the Policy if (i) the respondent is actually offering the goods or services at issue; (ii) the respondent uses the website to sell only genuine trademarked goods or services; (iii) the website accurately discloses the respondent’s relationship with the trademark owner; and (iv) the respondent must not try to corner the market in all domain names and thus deprive the trademark owner of reflecting its own mark in a domain name. If even one of these requirements is not met, the respondent fails the test and has no rights or legitimate interests in the disputed domain name: *ADIDAS AG v Glenn Tart*, WIPO Case No. [D2022-4350](#).

It is sufficient to refer to just two reasons why, on the facts of this matter, the Respondent is not able to claim the benefit of the *Oki Data* ‘safe harbor’.

First, from the website the Respondent is offering to sell MOUNJARO branded goods to jurisdictions where the MOUNJARO product has not yet been legally approved for distribution. The website claims “secure worldwide shipping” available to “almost all countries”. The online cart allows Internet users to click on a worldwide range of countries. The Complainant states that because its MOUNJARO trademarked product is not available for worldwide distribution, the goods that the Respondent is purporting to offer must be either gray goods or counterfeit. A prior Panel has held that such activity does not amount to actually offering goods at issue under the first element of the *Oki Data* test: *Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait*, WIPO Case No. [D2023-3670](#).

Secondly, the Respondent's website makes prominent use of the MOUNJARO Trademark and refers to "Mounjaro pharmacies" but provides no explanation whatever of its relationship with the Complainant. This carries with it a construction of implied association with the Complainant and for this reason cannot constitute legitimate or fair use.

For all the foregoing reasons 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.

The Panel is satisfied that the disputed domain name has been registered in bad faith for the following reasons.

The Panel finds that the MOUNJARO Trademark is an invented word which is distinctive. In this regard it notes that prior Panels have found that MOUNJARO is widely recognized to designate the Complainant's pharmaceutical products. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Ralph Aruf Bhatti*, WIPO Case No. [D2023-3674](#); see also *Eli Lilly and Company v. Janni Louche*, WIPO Case No. [D2023-3787](#).

This Panel is satisfied that the publicity given to the Complainant's MOUNJARO Trademark following its launch in June 2022 and the volume of sales achieved by the end of 2022 amply validate these findings of the prior panels. The Panel is satisfied that the Complainant's reputation in its MOUNJARO Trademark was well established before registration of the disputed domain name on April 22, 2023.

Paragraph 2 of the UDRP puts the burden on registrants where it states:

"By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and bond to us that:[...] to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of a third party [...]. It is your responsibility to determine whether your domain name infringes or violates someone else's rights."

The Panel is satisfied that the Respondent had knowledge of the Complainant's well-known MOUNJARO Trademark when he registered the disputed domain name. Any search carried out by the Respondent would have revealed the Complainant and its trademark rights. But even without this, the Respondent's launch of the website at the disputed domain name which makes significant use of the Complainant's MOUNJARO Trademark (and also the Complainant's registered logo trademark) demonstrates deliberate intent.

In this regard the Respondent was given the opportunity to respond to the Complaint but has chosen not to do so. The Panel is entitled to draw adverse inferences from that failure.

The Panel is also so satisfied that the Respondent is using the disputed domain name in bad faith for the following reasons:

- (a) The disputed domain name prominently using the MOUNJARO Trademark together with the logo trademark throughout the website located at the disputed domain name will mislead many Internet users. They will be attracted to the disputed domain name thinking that this is connected with or created by the Complainant when there is no such connection.

- (b) The Respondent is using the Complainant's MOUNJARO Trademark to drive Internet traffic to its website where it sells competitive pharmaceutical products. Other products produced by rival manufacturers are marketed by the website and directly compete with the Complainant's MOUNJARO branded product.
- (c) The Respondent is using Whois information that points to a non-existent address in Cameroon. Such actions have been found by prior Panels to constitute use in bad faith, for example: *World Market Management Services, LLC v. Aleksandr Butenko*, WIPO Case No. [D2023-2377](#).
- (d) The Panel is persuaded by the Complainant's concern that the Respondent's use of its MOUNJARO Trademark in the disputed domain name is potentially harmful to the health of unsuspecting consumers. Consumers who are aware of the Complainant and its MOUNJARO mark may be encouraged to purchase products believing that they are dealing with the Complainant, or a "pharmacy" authorized and approved by the Complainant when this is not the case. The fact that the Respondent is offering what are prescription-only products without prescription and without the apparent oversight of a health professional further supports a finding of use in bad faith.
- (e) Again, the Panel is entitled to draw adverse inferences from the failure of the Respondent to respond to the detailed complaint and factual allegations made by the Complainant. In the circumstances that failure supports the Panel's conclusion of use of the disputed domain name in bad faith.

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 <mounjarostore.com> be transferred to the Complainant.

*/Andrew Brown K.C./*

**Andrew Brown K.C.**

Sole Panelist

Date: March 15, 2024