

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Mane Na
Case No. D2024-0642

1. The Parties

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

Respondent is Mane Na, United States.

2. The Domain Name and Registrar

The disputed domain name <buymounjaro.online> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 12, 2024. On February 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 13, 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 (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to Complainant on February 14, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on the same day.

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 Respondent of the Complaint, and the proceedings commenced on February 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 18, 2024.

The Center appointed Jeffrey M. Samuels as the sole panelist in this matter on March 20, 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

In June 2022, Complainant launched its MOUNJARO brand product for use in connection with injectable pharmaceutical products for the treatment of type 2 diabetes. The MOUNJARO product has been referred to as a “blockbuster” success. By the end of 2022, the product produced nearly USD 280 million in revenue and sales of the product amounted to more than USD 5.1 billion in 2023. Complainant’s MOUNJARO product has received substantial media coverage around the world. The United States Food and Drug Administration approved the product for use on May 13, 2022, and the product has also been approved in Australia, Canada, Japan, Kuwait, Poland, Saudi Arabia, Switzerland, the United Arab Emirates, and the United Kingdom.

To date, Complainant has obtained at least 90 registrations for its MOUNJARO trademark across 60 countries around the world. These registrations include United States Registration No. 6809369, which issued on August 2, 2022; and European Union Registration No. 018209187, which issued on September 8, 2020.

Complainant also owns the domain name <mounjaro.com>, which it registered on October 21, 2019, and which is used by Complainant to advertise and provide information regarding its MOUNJARO product.

The disputed domain name was registered on July 30, 2023. According to Complainant, the disputed domain name relates to a website that sells gray market or potentially counterfeit versions of the MOUNJARO product in countries where the product has not been legally approved for distribution.

5. Parties’ Contentions

A. Complainant

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

Complainant first asserts that the disputed domain name is confusingly similar to the MOUNJARO trademark insofar as it incorporates the same in its entirety, adding only the descriptive term “buy” and the generic Top-Level Domain (“gTLD”) “.online”.

Complainant further alleges that Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is commonly known by the disputed domain name and, according to Complainant, Respondent is neither using the disputed domain name in connection with a bona fide offering of goods nor making a legitimate noncommercial or fair use of the disputed domain name. Complainant also has not given Respondent permission, authorization, consent, or license to use its MOUNJARO mark.

Complainant maintains that, pursuant to the decision in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“Oki Data”), Respondent may not be found to be using the disputed domain name to promote a bona fide offering of goods placed on the market by its owner. Complainant first notes that the goods offered by Respondent at the disputed website are either gray market goods or otherwise counterfeit and are offered for sale in jurisdictions where the MOUNJARO product has not been authorized. Complainant also points out that Respondent does not disclose its relationship (or lack thereof) with Complainant and that the addresses provided on Respondent’s website appear to be fabricated.

Complainant further observes that the website associated with the disputed domain name includes unauthorized marketing images of the MOUNJARO auto-injector pens.

With respect to the issue of bad faith registration and use, Complainant argues that “there can be no doubt” that Respondent registered the disputed domain name with knowledge of Complainant and its MOUNJARO trademark since Respondent is purporting to sell Complainant’s own goods under a domain name that is confusingly similar to the MOUNJARO mark. Complainant contends that Respondent is using the MOUNJARO mark to drive Internet traffic to its website under the disputed domain name to profit from the sale of gray market or otherwise counterfeit products, all while concealing its identity.

Complainant alleges that Respondent is using the disputed domain name to offer prescription-only products without any requirement for a prescription or in jurisdictions where prescriptions are otherwise not yet available. Respondent’s website, Complainant asserts, makes no indication that a prescription is required to purchase the MOUNJARO product. According to Complainant, this is “potentially harmful to the health of many unsuspecting consumers who may purchase products advertised through Respondent’s website under the mistaken impression that they are dealing with Complainant or an authorized distributor of Complainant and, therefore, will be receiving safe and effective drugs approved by health authorities around the world”.

Finally, Complainant notes that the failure to give accurate Whois information raises a rebuttable presumption of bad faith registration and use.

B. Respondent

Respondent did not reply to 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.

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 MOUNJARO 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 the term “buy”, and the gTLD “.online” 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](#), sections 1.8 and 1.11.1.

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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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 case file establishes that the disputed domain name resolves to a website that makes available for sale Complainant’s MOUNJARO product in jurisdictions in which such product has not been approved for sale and without any indication that a prescription is necessary to purchase the product. These facts clearly preclude a finding that Respondent has rights or legitimate interests in the disputed domain name. See *Eli Lilly and Co. v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhati*, WIPO Case No. [D2023-3674](#). Complainant also establish that Respondent fails to meet the requirements set forth in *Okidata* to establish rights or legitimate interests in connection with the sale of goods placed on the market by a complainant.

In addition, prior UDRP panels have held that the use of a domain name for illegal activity, here impersonation of Complainant by unauthorized copying of its marks, logos and copyright works, and purported sale of pharmaceutical products that require a prescription in jurisdictions where it cannot be legally obtained, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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, in registering the disputed domain name, intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant’s MOUNJARO mark.

Further, the fact that Respondent purports to sell Complainant’s own goods (albeit without the need for a prescription and in jurisdictions where the MOUNJARO product has not approved for distribution) clearly establishes that Respondent was aware of, and targeted, Complainant and its MOUNJARO product at the time of registration of the disputed domain name, which further supports a finding of the requisite bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Finally, and, perhaps, most importantly, Respondent’s use of Complainant’s mark may lead to harmful effects on the health of the general public, insofar as the MOUNJARO product may be used without prescription (and, thus, without guidance from a physician). Moreover, any such use in jurisdictions where the MOUNJARO product has not been approved, which is most countries, presumably, would be unlawful. In the Panel’s opinion, this makes this case a particularly egregious example of bad faith registration and use.

The Panel finds that 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, <buymounjaro.online>, be transferred to Complainant.

/Jeffrey M. Samuels/

Jeffrey M. Samuels

Sole Panelist

Date: April 3, 2024