

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. asad khan
Case No. D2024-1027

1. The Parties

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

Respondent is asad khan, United States.

2. The Domain Name and Registrar

The disputed domain name <mounjarokaufenddeutschland.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2024. On March 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 12, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication on March 12, 2024 providing the registrant and contact information disclosed by Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on March 12, 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 Respondent of the Complaint, and the proceedings commenced on March 18, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 7, 2024. Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 8, 2024.

The Center appointed Scott R. Austin as the sole panelist in this matter on April 22, 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

Founded in 1876 by Colonel Eli Lilly, Complainant is a leading pharmaceutical company which has introduced to market well-known drugs such as vancomycin, Prozac, Cialis, Zyprexa, and more recently injectable pharmaceutical products for the treatment of type 2 diabetes distributed under the trademark MOUNJARO (the "MOUNJARO Mark") which was approved for distribution by the U.S. Food and Drug Administration on May 13, 2022, as well as in Australia, Canada, Germany, Japan, Kuwait, Poland, Italy, Saudi Arabia, Switzerland, the United Arab Emirates, and the United Kingdom. Complainant's pharmaceutical products distributed under the MOUNJARO Mark are expected to be approved and launched in additional countries over time.

Complainant launched its MOUNJARO Mark products in June of 2022. By the end of 2022, the products generated revenues of nearly USD 280 million and continued to increase throughout 2023, with Complainant's year-end financial report announcing revenue of more than USD 5.1 billion in connection with the MOUNJARO Mark products.

Complainant has obtained at least 90 registrations for the MOUNJARO Mark (or its foreign equivalents) across 60 jurisdictions around the world including the following:

- European Union Trademark Registration No. 018209187, MOUNJARO, registered on September 8, 2020 in International Class 5;
- United Kingdom Trademark Registration No. UK00003608193, MOUNJARO, registered on July 16, 2021 in International Class 5; and
- United States Trademark Registration No. 6809369, MOUNJARO, registered with the United States Patent and Trademark Office ("USPTO") on August 2, 2022 in International Class 5.

Complainant also has incorporated the MOUNJARO Mark into its domain name <mounjaro.com> registered by Complainant on October 21, 2019, and used to access Complainant's official website (the "MOUNJARO Mark Website") since at least as early as May 17, 2022 to advertise and provide information regarding its MOUNJARO Mark pharmaceutical products.

Respondent registered the disputed domain name on February 5, 2024. The uncontested evidence submitted with the Complaint shows that the disputed domain name resolves to a copycat website using Complainant's copyright-protected images that purportedly sells gray market or potentially counterfeit versions of Complainant's MOUNJARO Mark pharmaceutical products without a prescription, in unauthorized jurisdictions and at steep discounts.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name: that the disputed domain name is confusingly similar to Complainant's trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of the probabilities that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. Trademark registration evidence has been submitted in the form of electronic copies of valid and subsisting trademark registration documents in the name of Complainant referenced in Section 4 above and therefore, Complainant has demonstrated it has rights in the MOUNJARO Mark. Ownership of a nationally registered trademark constitutes prima facie evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1; see *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#); see also *Janus International Holding Co. v. Scott Rademacher*, WIPO Case No. [D2002-0201](#).

Complainant also shows that prior UDRP panels have found Complainant's MOUNJARO Mark, as an invented term, to be highly distinctive and widely recognized, factors which are more properly considered in the Panel's determination of bad faith in its assessment of the third element below. See e.g., *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#); *Eli Lilly and Company v. Janni Louche*, WIPO Case No. [D2023-3787](#); see also *Telstra Corporation Limited v. Telsra com/Telecomunicaciones Serafin Rodriguez y Asociados*, WIPO Case No. [D2003-0247](#).

[WIPO Overview 3.0](#), section 1.8 provides: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element."

While the addition of the terms here, “kaufen”, the German-language word for “buy” and “deutschland” the German-language word for “Germany”, may bear on assessment of the second and third elements, the Panel finds the addition of such terms within the disputed domain name do not prevent a finding of confusing similarity between the disputed domain name and Complainant’s mark for purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. See *Advance Magazine Publishers Inc. v. Arena International Inc.*, WIPO Case No. [D2011-0203](#); see also *F. Hoffmann-La Roche AG v. Katharina Mertens*, WIPO Case No. [D2015-0486](#).

Prior UDRP panels have also found the Top-Level Domains, such as “.com” in this case, being viewed as a standard registration requirement, may typically be disregarded under the first element analysis. See [WIPO Overview 3.0](#), section 1.11.1; see also *Bentley Motors Limited v. Domain Admin / Kyle Rocheleau, Privacy Hero Inc.*, WIPO Case No. [D2014-1919](#); *L’Oréal v. Tina Smith*, WIPO Case No. [D2013-0820](#).

The Panel finds Complainant’s MOUNJARO Mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the MOUNJARO Mark for the purposes of the Policy.

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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While 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 often impossible 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. 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.

Complainant has established, prima facie, that Respondent lacks rights or legitimate interests in the disputed domain name. Complainant shows that none of the circumstances provided in paragraph 4(c) of the Policy for demonstrating a respondent’s rights and legitimate interests in a domain name are present in this case.

First, Complainant shows that Respondent’s business cannot avail itself of the protections developed under the “*Oki Data* test” that a mark may be used legitimately without the trademark owner’s consent to promote a bona fide offering of goods placed on the market by the owner of the goods so long as the factors are met as first enunciated in *Oki Data Americas, Inc v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and followed in subsequent cases such as *Deutsche Telekom AG v. Mighty LLC/Domain Admin*, WIPO Case No. [D2005-0027](#). Given the clearly illegitimate nature of Respondent’s business using a domain name confusingly similar to the MOUNJARO Mark to launch a copycat website constructed with infringing copies of Complainant’s copyright protected images to purportedly sell unauthorized counterfeit pharmaceutical products to unsuspecting consumers taken in by Respondent’s tactics to impersonate Complainant with no disclaimer by Respondent of affiliation or lack of affiliation with Respondent. Given the blatantly infringing nature of Respondent’s website, such conduct would be incapable of being mitigated through any disclaimer, no matter how bold, conspicuous, or extensive. As such the Panel finds the *Oki Data* Test benefits unavailable to Respondent here. Instead review of Respondent’s business under each of these factors conversely demonstrates how illegitimate Respondent’s business is considering its purported sale of counterfeit pharmaceutical products under the MOUNJARO Mark without a prescription in unpermitted jurisdictions at up to 90% discounted prices.

Prior UDRP panels have held that the use of a domain name for illegal activity as applicable to this case: sale of alleged counterfeit goods or illegal pharmaceuticals, impersonation/passing off, among other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. These facts lead the Panel to find Complainant's contentions persuasive that Respondent's foregoing conduct constitutes the illegal activity referenced above that can never confer rights or legitimate interests on a respondent. See *Valero Energy Corporation and Valero Marketing and Supply Company v. Valero Energy*, WIPO Case No. [D2017-0075](#).

Second, Complainant asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor has Complainant given Respondent permission or license to use Complainant's trademarks in any manner, including in domain names. Prior UDRP panels have held "in the absence of any license or permission from Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the Disputed Domain Name could reasonably be claimed". *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#).

Third, Complainant contends Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests under Policy paragraph 4(c)(ii). Complainant has shown in the Registrar's registrant data submitted to the Center that Respondent, as registrant of the disputed domain name, identified as "asad khan", is not commonly known by the disputed domain name because it clearly bears no resemblance to it, nor to the MOUNJARO Mark or Complainant's official <mounjaro.com> domain name.

Prior UDRP panels have held where no evidence, including the Whois record for the disputed domain name, suggests that Respondent is commonly known by the disputed domain name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of Policy paragraph 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#).

Having reviewed the 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.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used 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. This Panel finds that, based on the record, Complainant has demonstrated the existence of Respondent's bad faith pursuant to paragraph 4(b) of the Policy.

First, given the widely recognized, international reputation attributed to Complainant and its MOUNJARO Mark, that the MOUNJARO Mark is a term invented by Complainant and recognized by prior UDRP panels in the decisions cited in Section 6A above as a highly distinctive mark, it is not plausible that Respondent could have been unaware of Complainant at the time it registered the disputed domain name. See e.g., *Eli Lilly and Company v. Shoab Manzoor, XMart Host, Zain Ali and Rauf Bhatti, supra*; *Eli Lilly and Company v. Janni Louche, supra*; *Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait*, WIPO Case No. [D2023-3670](#). Based on the foregoing, the Panel finds Respondent had actual knowledge of Complainant evidenced by the registration and use of the disputed domain name to impersonate Complainant and thereby confuse Internet users and direct them to Respondent's copycat website that displayed Complainant's MOUNJARO Mark and copyright protected images of its products, constitutes registration and use of the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy.. See *Johnson & Johnson v. Weibin Xu*, WIPO Case No. [D2016-0063](#).

The Panel finds that the use of the disputed domain name displaying a website using a number of Complainant's official product images without Complainant's authorization (e.g., showing the MOUNJURO Mark on images of its auto-injector pens) which strengthens the false impression of an affiliation with Complainant, purportedly selling counterfeit pharmaceutical products under the MOUNJARO Mark in jurisdictions where they are not legally available, , and not showing any details regarding the lack of relationship between Respondent and Complainant, creates for Internet users the false impression that the online platform accessed through the disputed domain name at Respondent's website, is that of Complainant or a business affiliated with Complainant or one of its official distributors, which it is not. Respondent's conduct also endangers the health of those Internet users who purchase inferior or adulterated pharmaceuticals from Respondent believing the products listed to be those of Complainant. See *Eli Lilly and Company v. Ibrahim Keskin*, WIPO Case No. [D2023-5179](#).

Taking into account all the circumstances of this case, the Panel concludes that the current registration and use of the disputed domain name by Respondent is in bad faith.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of alleged counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy and 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 <mounjarokaufendeutschland.com> be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: June 1, 2024