

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Carlos Gram
Case No. D2024-1028

1. The Parties

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

The Respondent is Carlos Gram, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <acquistarezepbound.com> is registered with NetEarth One Inc. d/b/a NetEarth (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 11, 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 March 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 15, 2024.

The Center appointed Luca Barbero 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

The Complainant is a pharmaceutical company which is the producer of an injectable prescription medicine for the treatment of obesity approved by the United States Food and Drug Administration (FDA) on November 8, 2023, and commercialized under the trademark ZEPBOUND. The Complainant launched the ZEPBOUND product on December 5, 2023, and by the end of 2023, the product had already produced over one-hundred and seventy-five million dollars in revenue.

The Complainant is the owner of several trademark registrations for ZEPBOUND, including the following, as per trademark registration certificates submitted as annex 6 to the Complaint:

- United States trademark registration No. 7288373 for ZEPBOUND (word mark), filed on April 14, 2022, and registered on January 23, 2024, in international class 5;
- European Union trademark registration No. 018688583 for ZEPBOUND (word mark), filed on April 19, 2022, and registered on October 08, 2022, in class 05;
- New Zealand trademark registration No. 1211740 for ZEPBOUND word mark, filed on June 2, 2022, and registered on December 6, 2022, in class 05;
- European Union trademark registration No. 018748013 for ZEPBOUND (semi-figurative mark), filed on August 16, 2022, and registered on February 15, 2023, in class 5.

The Complainant is also the owner of the domain name <zepbound.com>, registered on April 13, 2022, and used by the Complainant to promote its ZEPBOUND product.

The disputed domain name <acquistarezepbound.com> was registered on January 13, 2024, and is pointed to a website displaying the ZEPBOUND word mark where the ZEPBOUND product is offered for sale along with third-party pharmaceutical products, including competitors' medicines for weight loss.

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 <acquistarezepbound.com> is confusingly similar to the trademark ZEPBOUND in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the term "acquistare" which means "to buy" in Italian, and the generic Top-Level Domain ("gTLD") ".com".

Moreover, the Complainant submits that the ZEPBOUND mark is an invented word that has a high degree of individuality, inherent distinctiveness and no common colloquial use.

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is not commonly known by the disputed domain name and was in no way granted permission, authorization, consent or license to use the Complainant's ZEPBOUND mark.

The Complainant also submits that considering:

i) the Respondent is offering for sale gray market or counterfeit versions of its ZEPBOUND product in jurisdictions where it has not been legally approved for distribution, as the Respondent's website states that it provides "treatments at affordable prices throughout Italy and around the world", and is offering for sale also third-party prescription medicines,

ii) the Respondent fails to accurately disclose his lack of relationship with the Complainant on the website and on the contrary is posting content such as the statements "Zepbound has undergone rigorous testing to ensure its effectiveness. Our formula is designed to deliver tangible, sustainable results, helping you achieve your weight loss goals with confidence" that could potentially lead Internet users to falsely believe that Respondent's website is one of the Complainant's official websites, that Respondent is an authorized distributor of ZEPBOUND brand product, or that the Respondent owns the ZEPBOUND mark;

iii) the disputed domain name itself is inherently misleading because it incorporates the term "acquistare" alongside the Complainant's trademark, and

iv) the Respondent has not published on his website any contact information or other identifying information outside of a copyright notice for "Acquistare Zepbound" and an address in the Netherlands that does not appear verifiable or related to the Respondent, the Respondent does not meet the criteria set out in *Ok! Data Americas, Inc v. ASD, Inc*, WIPO Case No. [D2001-0903](#) (so-called "Ok! Data test") for the legitimate resale of goods by reference to a third-party trademark.

With reference to the circumstances evidencing bad faith, the Complainant indicates that considering the Respondent filed an application for the mark in the United States on April 14, 2022, has extensively marketed its product in the United States, and media sources around the world have covered the product's release, it is reasonable to infer that the Respondent knew of the Complainant's inherently distinctive ZEPBOUND mark at the time of registering the confusingly similar disputed domain name on January 13, 2024, particularly considering that the Respondent is purporting to sell the Complainant's own goods (albeit in jurisdictions where it is not legally approved for distribution and therefore without the requisite prescription) on the website to which the disputed domain name resolves.

The Complainant states that the Respondent is using the Complainant's mark to drive internet traffic to its website, where he is offering counterfeit or grey market products whilst failing to disclose its lack of relationship with the Complainant and providing false contact information, in the attempt to attract internet users to his website for commercial gain whilst creating a likelihood of confusion with the ZEPBOUND mark according to paragraph 4(b)(iv) of the Policy.

The Complainant submits that the Respondent's offer for sale of products which compete with the ones of the Complainant, and his offer of prescription-only products where prescriptions are not legally available, further support a finding of bad faith.

The Complainant further asserts that the registration of the disputed domain name, confusingly similar to the Complainant's registered trademark, by the Respondent who has no relationship to the mark, is sufficient evidence to demonstrate opportunistic bad faith.

The Complainant concludes that the Respondent's use of the Complainant's mark in the disputed domain name is potentially harmful to the health of many unsuspecting consumers who may purchase products advertised through the Respondent's website under the mistaken impression that they are dealing with the Complainant or an authorized distributor of the Complainant and, therefore, will be receiving safe and effective drugs approved by health authorities around the world.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that 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.

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. Indeed, the Complainant has provided evidence of ownership of valid trademark registrations for ZEPBOUND.

The entirety of the 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 the term “acquistare” (“to buy” in Italian) 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.

Therefore, 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 notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademark. Moreover, there is no element from which the Panel could infer a Respondent's right over the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel also finds that the Respondent's use of the disputed domain name does not amount to a bona fide offering of goods or services or a legitimate non-commercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

Based on the information supplied by the Complainant and the indications provided on the website linked to the disputed domain name, the Respondent appears to be offering the ZEPBOUND product without prescription, selling it also in jurisdictions where the ZEPBOUND product has not been legally approved for distribution. Moreover, the Respondent has used the disputed domain name to promote the sale of ZEPBOUND and third-party pharmaceutical products, including competitors' medicines for weight loss. Furthermore, the Respondent has not accurately and prominently disclosed his lack of relationship with the Complainant. In view of the foregoing, the Panel finds that the Respondent fails to meet the requirements set forth in the *Oki Data* test for legitimate resellers, distributors or service providers of a complainant's goods or services to claim nominative fair use of a disputed domain name incorporating a complainant's trademark. [WIPO Overview 3.0](#), section 2.8.

The Panel further finds that the disputed domain name, incorporating the Complainant's registered trademark ZEPBOUND in combination with the dictionary term "acquistare" ("to buy" in Italian), is inherently misleading as it suggests an affiliation with the Complainant. Even where a domain name consists of a trademark plus additional terms, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, 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.

In view of the prior registration and use of the trademark ZEPBOUND in connection with the Complainant's injection prescription medicine and the substantial media coverage received since the launch of the ZEPBOUND product in December 2023, the Panel finds that the Respondent was or could have been aware of the Complainant's trademark at the time of registration.

Indeed, considering the distinctiveness of the mark ZEPBOUND, which is entirely reproduced in the disputed domain name, and the fact that the disputed domain name resolves to a website displaying the ZEPBOUND word mark and offering for sale – amongst others - the ZEPBOUND product, the Panel finds that the Respondent intended to target the Complainant and its trademark at the time of registration of the disputed domain name.

In view of the Respondent's use of the disputed domain name in connection with the website described above, featuring the Complainant's mark and offering purported ZEPBOUND products for sale alongside third-party pharmaceutical products, without providing accurate contact information about the website operator nor any disclaimer as to the lack of affiliation with the Complainant, the Panel finds that the Respondent has intentionally attempted to attract Internet users to his website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of his website and the products promoted therein according to paragraph 4(b)(iv) of the Policy.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Therefore, the Panel finds that the Complainant has also 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 <acquistarezepbound.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: May 6, 2024