

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Cesargabriel Chainz2
Case No. D2024-1029

1. The Parties

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

Respondent is Cesargabriel Chainz2, United States.

2. The Domain Name and Registrar

The Disputed Domain Name <zepboundtirzepatide.com> is registered with Gransy, s.r.o. d/b/a subreg.cz (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 disclosing registrant and contact information for the Disputed Domain Name which differed from the named Respondent (Not Disclosed Not Disclosed, My Domain Provider) and contact information in the Complaint. The Center sent an email communication to Complainant on March 11, 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 March 11, 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 13, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 2, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 3, 2024.

The Center appointed Richard W. Page as the sole panelist in this matter on April 9, 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

Complainant is Ely Lilly and Company which is an international pharmaceutical company headquartered in the United States. Complainant develops and manufactures drugs, including a weight loss drug named ZEPBOUND.

Complainant has rights in the ZEPBOUND Mark in various jurisdictions. Complainant's rights in the ZEPBOUND Mark date back to as early as April 14, 2022, when it filed for registration with the United States Patent and Trademark Office. The ZEPBOUND Mark was registered on the Principal Register (Registration No. 7,288,373 on January 23, 2024, in association with pharmaceutical preparations for treatment of obesity), giving Complainant a first use date of November 30, 2023, and priority over any competing claims to the ZEPBOUND Mark based on a later use. Complainant also owns the European Union Trade mark ZEPBOUND (Registration No. 018688583 on October 8, 2022).

To date, Complainant has obtained at least fifty-four (54) registrations for the ZEPBOUND Mark across seventy-one (71) countries around the world and has fourteen (14) pending applications for the ZEPBOUND Mark across thirty-eight (38) countries. Furthermore, Complainant has obtained at least two (2) registrations of the ZEPBOUND Logo across twenty-eight (28) countries around the world and has five (5) pending applications for the ZEPBOUND Logo across twenty-nine (29) countries.

The United States Food and Drug Administration ("FDA") announced its approval of the ZEPBOUND brand product for use in connection with injectable pharmaceutical products for the treatment of obesity on November 8, 2023. Complainant launched the product on December 5, 2023, and by the end of 2023, the product had already produced over USD one-hundred and seventy-five million in revenue. The launch of the ZEPBOUND brand product was long awaited by the public, as it followed the launch of Complainant's widely recognized MOUNJARO brand product, which uses the same active ingredient (tirzepatide) and is used for the treatment of diabetes. The product is being approved and launched in additional countries outside the United States over time.

Complainant also has an Internet presence for its ZEPBOUND brand product, available at <zepbound.com>. Complainant registered the <zepbound.com> domain name on April 13, 2022, and the website is used to advertise and provide information regarding its ZEPBOUND brand product. Complainant has used this domain name to identify a website since at least as early as November 9, 2023. Because Respondent registered the Disputed Domain Name on December 3, 2023, Complainant's rights in the ZEPBOUND Mark pre-date Respondent's registration date, and Complainant has both senior and exclusive rights to the ZEPBOUND Mark.

The Disputed Domain Name was registered on December 3, 2023, and resolves to a website which offers the ZEPBOUND product for sale without prescription in jurisdictions where such sales have not been approved. In addition, the website uses copyright-protected material of Complainant and offers to sell third-party products in competition with Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the three elements required under the Policy for a transfer of the Disputed Domain Name.

Notably, Complainant contends that the ZEPBOUND Mark is an invented word that has a high degree of individuality, inherent distinctiveness, and no common colloquial use. Additionally, both prior to and following the December 5, 2023 launch of the ZEPBOUND branded product, it has garnered a great deal of media attention, making it one of the most recognizable medicines on the market. An invented word which has acquired a high degree of distinctiveness is deemed to be highly distinctive mark.

Complainant further contends that the Disputed Domain Name consist of the highly distinctive ZEPBOUND Mark and the generic drug name “tirzepatide,” in addition to the generic Top-Level Domain (gTLD) “.com”.

Complainant submits that there is no evidence that Respondent is commonly known by the Disputed Domain Name. Moreover, Respondent is neither using the Disputed Domain Name in connection with a bona fide offering of goods or services nor making a legitimate noncommercial or fair use of the Disputed Domain Name. Instead, Respondent has registered the Disputed Domain Name utilizing a privacy-shielding service to direct Internet traffic to a website to sell gray market or potentially counterfeit versions of the ZEPBOUND brand product without a prescription, as well as competitive products, all while failing to disclose Respondent's lack of relationship to Complainant.

Complainant further submits that the ZEPBOUND brand product is only available for sale in a specified jurisdiction. Despite this, when users progress through the ordering process on Respondent's website, users are permitted to purchase and ship ZEPBOUND brand product to over two hundred jurisdictions worldwide. As such, it is clear that the goods offered by Respondent are either gray market good or otherwise counterfeit. Such sales cannot constitute bona fide sales.

Complainant further submits that Respondent also offers for sale competing third-party products, such as Ozempic, Wegovy, and Saxenda brand products, which are marketed and directly compete with the ZEPBOUND brand product.

Complainant alleges that Respondent has constructive notice of the ZEPBOUND Mark, in light of Complainant's multiple trademark registrations throughout the world.

Complainant further alleges it has not given Respondent permission, authorization, consent or license to use the ZEPBOUND Mark. Despite this fact, the Disputed Domain Name resolves to a website enabling Respondent to cash in on the strength of the ZEPBOUND Mark and the reputation of the product with which it is associated.

Complainant further alleges that Respondent is using Complainant's copyright-protected images, misleading users into believing that there is an association between Complainant and Respondent. These allegations serve as evidence of an intentional attempt to attract Internet users to the website to which the Disputed Domain Name resolves for commercial gain in bad faith by creating a likelihood of confusion with the ZEPBOUND Mark.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable.”

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met.

See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following three elements:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the ZEPBOUND Mark in which Complainant has rights; and,
- ii) that 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 ZEPBOUND Mark and the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.7.

[WIPO Overview 3.0](#), section 1.2.1 states that registration is prima facie evidence of Complainant having enforceable rights in the ZEPBOUND Mark.

The Complainant has shown rights in respect of the ZEPBOUND Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the ZEPBOUND Mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to the ZEPBOUND Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the addition of the generic term “tirzepatide” does not prevent a finding of confusing similarity between the Disputed Domain Name and the ZEPBOUND Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondent lacks rights or legitimate interests in the Disputed Domain Name may result in the difficult task of “proving a negative,” requiring information that is often primarily within the knowledge or control of Respondent. As such, where Complainant makes out a prima facie case that Respondent lacks rights or legitimate interests, the burden of production on this element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Paragraph 4(c) of the Policy allows three nonexclusive methods for the Panel to conclude that Respondent has rights or legitimate interest in the Disputed Domain Name:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or

(iii) you [Respondent] are making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the ZEPBOUND Mark.

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.

Panels have held that the use of a domain name for illegal activity here, claimed the unauthorized sale of drugs that require a prescription and governmental approval, sale of gray market or counterfeit goods, or illegal pharmaceuticals, can never confer rights or legitimate interests on 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

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name:

(i) circumstances indicating that you [Respondent] have registered or you have acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name registration to Complainant who is the owner of the ZEPBOUND Mark or to a competitor of Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Disputed Domain Name; or

(ii) you [Respondent] have registered the Disputed Domain Name in order to prevent the owner of ZEPBOUND Mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you [Respondent] have registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the ZEPBOUND Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product on your website or location.

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 Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the ZEPBOUND Mark.

In addition, Panels have held that the use of a domain name for illegal activity here, claimed sale of gray market, counterfeit or illegal pharmaceuticals 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.

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 <zepboundtirzepatide.com> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: April 18, 2024