

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. jeff ghiz
Case No. D2024-1296

1. The Parties

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

The Respondent is jeff ghiz, Cameroon.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 26, 2024. On March 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 28, 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, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 2, 2024 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on April 2, 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 the Respondent of the Complaint, and the proceedings commenced on April 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 3, 2024.

The Center appointed Alan L. Limbury as the sole panelist in this matter on May 10, 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, delivers pharmaceutical products around the world. The United States Food and Drug Administration announced its approval of the Complainant's MOUNJARO brand product for use in connection with injectable pharmaceutical products for the treatment of type 2 diabetes on May 13, 2022. The Complainant launched the product in June of 2022, and by the end of that year it had produced nearly two-hundred and eighty million dollars in revenue. The product is currently approved for distribution outside the United States in Australia, Canada, Germany, Japan, Kuwait, Poland, Saudi Arabia, Switzerland, the United Arab Emirates, and United Kingdom. The Complainant registered the domain name <mounjaro.com> on October 21, 2019 and uses it for its website to advertise and provide information regarding the MOUNJARO brand product.

The Complainant has rights in the MOUNJARO mark through numerous registrations, including with the United States Patent and Trademark Office ("USPTO") (e.g., Reg. No. 6,809,369, registered on August 2, 2022, in Class 5 for pharmaceutical preparations for the treatment of diabetes).

The disputed domain name <mounjaroeasyshop.com> was registered on November 22, 2023. It resolves to a website offering what appears to be the Complainant's MOUNJARO product for sale in many countries in which it is not approved for sale. The website also offers for sale third party products such as Ozempic, Wegovy, Saxenda and others, which directly compete with the Complainant's MOUNJARO brand product. The website does not identify the Respondent and does not disclose the Respondent's lack of relationship with the Complainant. Nor does it indicate that a prescription is required to purchase the MOUNJARO brand product.

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 Complainant's highly distinctive MOUNJARO mark and that the Respondent has no rights or legitimate interests in respect of the disputed domain name, which was registered and is being used in bad faith.

As to legitimacy, the Complainant contends that there is no evidence that the Respondent is commonly known by the disputed domain name. Moreover, the Respondent is neither using the disputed domain name in connection with a bona fide offering of goods and services nor making a legitimate noncommercial or fair use of it. Instead, the Respondent has registered the disputed domain name utilizing a privacy-shielding service to direct Internet traffic to a website that sells gray market or potentially counterfeit versions of the Complainant's MOUNJARO brand product in countries where the product has not been legally approved for distribution, and therefore without a valid prescription (as a prescription cannot be legally obtained in jurisdictions where the product has not been authorized for distribution). Additionally, the Respondent is using the disputed domain name to offer competing products. The Respondent carries out these activities while using the Complainant's copyright-protected images and failing to disclose the Respondent's lack of a relationship with the Complainant.

As to bad faith, the Complainant filed an application in the United States for the MOUNJARO mark on November 5, 2019 and has extensively marketed its MOUNJARO brand product in the United States and

other jurisdictions around the world. A prior Panel has found that the mark is “widely recognized” and that “there can be no doubt that the Respondent registered the disputed Domain Name with knowledge of Complainant’s rights,” particularly considering that the Respondent is purporting to sell the Complainant’s own goods (albeit without the apparent need for a prescription and in jurisdictions where it is not approved for distribution) under a domain name comprised of the Complainant’s mark accompanied only by descriptive terms. This is, itself, indicative of bad faith registration and use. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#) (October 24, 2023). Such is the case here, and the disputed domain name has thus been registered and used in bad faith.

The Respondent is using the Complainant’s mark to drive Internet traffic to its website under the disputed domain name in order to profit from the sale of gray market or otherwise counterfeit products, all while concealing its identity. It is also selling competitive products. Moreover, the Respondent is using the disputed domain name to offer prescription-only products without any apparent requirement for a prescription or in jurisdictions where prescriptions are otherwise not yet available. Moreover, the content of the website associated with the disputed domain name, in particular the use of the Complainant’s copyright-protected images, misleads users into believing that there is an association between the Complainant and the website, and serves as evidence of an intentional attempt to attract Internet users to the disputed domain name for commercial gain in bad faith by creating a likelihood of confusion with the mark.

The Whois information provided by the Respondent indicates that the Respondent’s address is clearly false for a few reasons. First, Internet searches suggest such an address does not exist in Douala, Cameroon and, as one might suspect, “streeet” is not an accurate street information. Second, no region of Cameroon is identified by the abbreviation “ed” and such a province or region does not appear to exist. Third, Cameroon does not have a postal code system, so the post code provided is inaccurate. In light of the above, it appears that the address identified in the Whois information is entirely fabricated and is further evidence that the disputed domain name was registered and is used in bad faith.

Lastly, 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

Paragraph 15(a) of the Rules instructs this Panel to “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.”

Paragraph 4(a) of the Policy requires that a complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (i) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint. However, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), at section 4.3.

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 3.0](#), section 1.7.

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

The Panel finds the Respondent's disputed domain name to be confusingly similar to the Complainant's mark, only differing by the addition of the descriptive words "easy" and "shop", which do nothing to distinguish the domain name from the mark. The inconsequential ".com" generic Top-Level Domain ("gTLD") may be ignored. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

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, namely:

- (i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

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.

As to paragraphs 4(c)(ii) and (iii) of the Policy, there is no evidence that the Respondent is or has been commonly known by the disputed domain name, which was registered on November 22, 2023. As noted above, the domain name resolves to a commercial website offering what appears to be the Complainant's MOUNJARO product for sale in many countries, as well as the competing products of other companies.

As to paragraph 4(c)(i) of the Policy, the test for a bona fide offering of the trademark owner's own goods and services is set out in *Oki Data Americas, Inc v. ASD, Inc.* WIPO Case No. [D2001-0903](#), as follows:

- (i) "Respondent must actually be offering the goods or services at issue..."
- (ii) Respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods....
- (iii) The site must accurately disclose the registrant's relationship with the trademark owner; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents....
- (iv) The Respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name...."

Assuming for present purposes that the Respondent's website offers the Complainant's genuine MOUNJARO products, it clearly fails the second *Oki Data* requirement because the website also offers competitors' products. It also fails the third requirement because it fails to identify the Respondent and fails to disclose that the Respondent has no relationship with the Complainant. [WIPO Overview 3.0](#), section 2.8.1.

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.

The circumstances set out above in relation to the second element satisfy the Panel that the Respondent was fully aware of the Complainant's distinctive MOUNJARO mark when the Respondent registered the disputed domain name and that the Respondent registered and is using the disputed domain name in bad faith by seeking to mislead Internet users into believing that the Respondent is authorized to sell the Complainant's MOUNJARO products together with competing products, specifically in countries which have not yet approved such products for sale and that the Complainant's products may be sold without a prescription. Hence the Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source sponsorship, affiliation, or endorsement of the Respondent's website and of the products promoted on that website. This demonstrates registration and use in bad faith to attract users for commercial gain under paragraph 4(b)(iv) of the Policy.

Further, the Panel finds that the provision by the Respondent of false Whois information is also evidence that the disputed domain name was registered and is used in bad faith.

The Panel finds the third element of the Policy has been established.

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 <mounjaroeasyshop.com> be transferred to the Complainant.

/Alan L. Limbury/

Alan L. Limbury

Sole Panelist

Date: May 24, 2024