

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. David Royal, cheapx
Case No. D2024-1379

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 David Royal, cheapx, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 1, 2024. On April 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 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 (*DATA REDACTED*) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 8, 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 8, 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 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 13, 2024.

The Center appointed Gregory N. Albright as the sole panelist in this matter on May 17, 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, is a pharmaceutical company based in the State of Indiana, United States.

The Complainant is the owner of numerous registrations for the MOUNJARO mark, including:

- Registration No. 6,809,369 issued by the United States Patent and Trademark Office (“USPTO”) on August 2, 2022, in class 5;
- Registration No. 7,068,463 issued by the USPTO on May 30, 2023, in class 44; and
- Registration No. 018209187 issued by the European Union Intellectual Property Office (“EUIPO”) on September 8, 2020, in class 5.

The Complainant also owns the <mounjaro.com> domain name, which the Complainant registered on October 21, 2019, and maintains a website where it promotes injectable pharmaceutical products for the treatment of type 2 diabetes.

Following approval of the Complainant’s MOUNJARO products by the United States Food and Drug Administration on May 13, 2022, the Complainant launched its product in June 2022, and the product produced nearly USD 280 million in revenue by the end of 2022. Sales continued to increase throughout 2023, with the Complainant’s year-end financial report announcing revenue of more than USD 5 billion. The Complainant’s MOUNJARO products have been approved for distribution in the United States and other countries, including Australia, Canada, Germany, Italy, Japan, Kuwait, Poland, Saudi Arabia, Switzerland, the United Arab Emirates, and the United Kingdom.

The disputed domain name was registered on February 25, 2024. The disputed domain name resolves to a website where claimed MOUNJARO-branded products and products offered by the Complainant’s competitors are offered for sale.

5. Parties’ Contentions

A. Complainant

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

Notably, the Complainant contends that the MOUNJARO mark is an invented word that is distinctive and widely recognized to designate the source of the Complainant’s pharmaceutical product. Other panels have so found. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#). Because the mark is highly distinctive, incorporation of the entirety of the mark in the disputed domain name is independently sufficient to create confusing similarity.

The disputed domain name is confusingly similar to the mark despite its addition of the geographically descriptive term “europe.” The addition of a geographic term to a mark does not prevent a finding of confusing similarity and, to the contrary, may even increase the risk of confusion. See *Eli Lilly and Company v. Abdul Faur Raza*, WIPO Case No. [D2023-4937](#) (finding the use of “uk” in the domain <mounjarouk.org> “may even increase the risk of confusion [...] as it can easily be considered as referring to the UK website of the Complainant’s group”).

The Complainant has not given the Respondent permission, authorization, consent, or license to use the mark.

Nor is the Respondent using the disputed domain name for a legitimate business purpose. To the contrary, the Respondent is using 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 products without a prescription in countries where the product has not been legally approved for distribution. MOUNJARO brand products are currently available for sale in a limited number of jurisdictions, but the Respondent's website offers MOUNJARO products to people of "All the World." The Respondent has also failed to identify itself – with a valid address – and the Respondent's website does not truthfully disclose that the Respondent has no relationship with the Complainant. The Respondent's website also exacerbates confusion through unauthorized use of the Complainant's official marketing images of the MOUNJARO brand auto-injector pens. Further, the Respondent's website states that no prescription is required to purchase MOUNJARO brand products, which is untrue. For all of these reasons, the Respondent is not using the Complainant's mark to legitimately promote a bona fide offering of goods placed on the market by the Complainant. *Cf. Oki Data America, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Bad faith registration and use is shown when, as here, a domain name is registered in order to utilize another's well-known trademark for attracting Internet users for commercial gain. The Respondent is using the Complainant's distinctive mark to drive Internet traffic to the Respondent's website in order to profit from the sale of gray market or otherwise counterfeit products, all while concealing the Respondent's identity. Bad faith is also shown because the Respondent is using the disputed domain name to offer prescription-only products without requiring a prescription, including in jurisdictions where prescriptions are not yet available. The Respondent's conduct is therefore potentially harmful to the health of unsuspecting consumers who may purchase product advertised through the Respondent's website under the mistaken impression that they are dealing with the Complainant or an authorized distributor of the Complainant's products and will be receiving safe and effective drugs approved by relevant health authorities.

B. Respondent

The Respondent did not reply to the 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.

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. Specifically, the MOUNJARO mark was registered in the United States and the European Union years before the Respondent registered the disputed domain name on February 25, 2024.

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 may bear on assessment of the second and third elements, the Panel finds the addition of "europe" to MOUNJARO mark 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.

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.

UDRP panels have held that the use of a domain name for illegal activity, including the sale of counterfeit goods or illegal pharmaceuticals, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Here, the disputed domain name resolves to a website where the Respondent is offering insulin products that require a prescription without a prescription, and falsely representing to consumers that the products the Respondent is offering are genuine and originate from the Complainant.

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.

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 the present case, the Panel notes that the Respondent registered the disputed domain name on February 25, 2024, after the Complainant had registered its distinctive MOUNJARO mark, and after the Complainant enjoyed very substantial sales of its MOUNJARO products including in the United States where the Respondent is apparently located. The record therefore supports the conclusion that the Respondent registered the disputed domain name with actual or constructive knowledge of the Complainant’s rights in the distinctive MOUNJARO mark for the bad faith purpose of trading on the Complainant’s mark, without authorization.

UDRP panels have held that the use of a domain name for illegal activity, like the sale of counterfeit goods or illegal pharmaceuticals and fraud alleged by the Complainant here, constitutes bad faith use. [WIPO Overview 3.0](#), section 3.4. Having reviewed the present record, the Panel finds the Respondent’s use and registration of the disputed domain name constitutes bad faith under the Policy.

The 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, <mounjaroeurope.com> be transferred to the Complainant.

/Gregory N. Albright/

Gregory N. Albright

Sole Panelist

Date: May 31, 2024