

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Not disclosed Not disclosed, IceNetworks Ltd.  
Case No. D2024-1698

### **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 Not disclosed Not disclosed, IceNetworks Ltd., Iceland.

### **2. The Domain Name and Registrar**

The disputed domain name <cialislilly.com> is registered with Internet Domain Service BS Corp (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 23, 2024. On April 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 25, 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 25, 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 May 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 29, 2024.

The Center appointed Jonathan Agmon as the sole panelist in this matter on June 3, 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 founded in May 1876 in Indianapolis, Indiana, United States. In 2004, sales of its products under its CIALIS brand in the United States totaled more than USD 206 million dollars, and its worldwide sales were in excess of USD 550 million dollars. From 2016 to 2022, its cumulative worldwide sales of CIALIS brand products totaled more than USD 9.442 billion dollars.

The Complainant owns various CIALIS and LILLY trademarks worldwide, including the following:

- United States trademark registration No. 2724589 for CIALIS, registered on June 10, 2003;
- Taiwan Province of China trademark registration No. 00945319 for CIALIS 犀利士, registered on March 1, 2002; and
- United States trademark registration No. 1226434 for LILLY, registered on February 8, 1983.

The Complainant operates its main domain name <cialis.com>, which was registered on August 10, 1999.

The disputed domain name was registered on December 12, 2018, and resolves to a website displaying the Complainant's CIALIS and LILLY trademarks, and purportedly offering the drug Cialis for sale.

#### **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 CIALIS and LILLY trademarks. The disputed domain name consists of the CIALIS and LILLY trademarks together with the generic Top-Level Domain ("gTLD") ".com". The Complainant's CIALIS trademark is an invented word that has a high degree of individuality, inherent distinctiveness and no common colloquial use.
- The Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that the Respondent is commonly known by the term "cialislilly". 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 the disputed domain name. As the Complainant has voluminous trademark registrations throughout the world, the Respondent ought to have actual, or at least constructive notice of the Complainant's CIALIS and/or LILLY trademarks, and still registered the disputed domain name. The Respondent is not authorized to use the CIALIS and/or LILLY trademarks. The Respondent is using the disputed domain name to fraudulently present itself as the Complainant and portray the Respondent's website as an official website for consumers in Taiwan Province of China belonging to the Complainant. The Respondent's website prominently displays the CIALIS and LILLY trademarks and displays Chinese characters that describe the website as "Cialis Taiwan [Province of China] Online Store". Its copyright statement identifies the Complainant, and it also provides the Complainant's contact information and details.

The Respondent did not disclose the lack of a relationship between its website and the Complainant on his website.

- The disputed domain name was registered and is being used in bad faith. The Complainant's CIALIS and LILLY trademarks were registered and used long before the disputed domain name was registered. It is therefore clear that the Respondent knew of the Complainant's CIALIS and/or LILLY trademarks at the time of registration of the disputed domain name. The Respondent is using the disputed domain name to impersonate the Complainant and to mislead Internet users into believing that it sells genuine products manufactured by the Complainant, and misleads users into believing that the Respondent's website is associated with the Complainant. This is evidence that the Respondent is attempting to attract Internet users to the disputed domain name for commercial gain in bad faith by creating a likelihood of confusion. Further, the Complainant's customers may mistakenly believe that products obtained from the Respondent's website are legitimate products of the Complainant which have been approved by the relevant health authorities around the world. This is also evidence of bad faith.

## **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.

The entirety of the CIALIS and LILLY trademarks are reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the combination of two trademarks may bear on assessment of the second and third elements, the Panel finds the combination of the CIALIS and LILLY trademarks does not prevent a finding of confusing similarity between the disputed domain name and either of the trademarks 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 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.

There is no evidence to suggest that the Respondent is commonly known by the disputed domain name. The Complainant's registration of its trademarks predates the registration of the disputed domain name. The disputed domain name resolves to a webpage that displays the Complainant's CIALIS and LILLY trademarks, and is purportedly offering prescription-only Cialis drugs for sale. There is no prominent and accurate disclaimer on the website disclosing the (lack of) relationship between the Parties.

Panels have held that the use of a domain name for illegal activity, here, claimed as applicable to this case: illegal pharmaceuticals, can never confer rights or legitimate interests on a 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**

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 the Respondent registered the disputed domain name long after the Complainant registered its CIALIS and LILLY trademarks. Given the distinctiveness of the Complainant's marks and their fame, it is highly unlikely that the Respondent did not know of the Complainant and its CIALIS and LILLY trademarks prior to the registration of the disputed domain name.

Further, the disputed domain name resolves to a webpage displays the Complainant's CIALIS and LILLY trademarks, where purportedly prescription-only drugs under the Complainant's CIALIS trademark are being offered for sale.

Panels have held that the use of a domain name for illegal activity, here, claimed as applicable to this case: illegal pharmaceuticals, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel notes that although the Notification of the Complaint and Written Notice from the Center appear to have been successfully delivered to the Respondent, the Respondent did not submit a response to the Complaint. This is further indication of bad faith, and the Panel draws negative inferences accordingly.

The Panel finds that 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 <cialislilly.com> be transferred to the Complainant.

*/Jonathan Agmon/*

**Jonathan Agmon**

Sole Panelist

Date: June 17, 2024