

## ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. David Royal/Namecheapx  
Case No. D2024-2074

### 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/Namecheapx, United States.

### 2. The Domain Name and Registrar

The disputed domain names <buymounjaroonline.org>; <mounjarouaepharmacy.org>; <zepboundcanada.com>; and <zepboundonlinepharmacy.com> are registered with CloudFlare, Inc. (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 17, 2024. On May 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 18, 2024, the Registrar transmitted by email to the Center its verification disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (“Namecheapx, DATA REDACTED”) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 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 amended Complaint on May 24, 2024.

The Center verified that the Complaint together with the amended 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 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 18, 2024.

The Center appointed Gary Saposnik as the sole panelist in this matter on June 24, 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, incorporated in Indiana, with its principal place of business in Indianapolis, Indiana, United States. Amongst its many pharmaceutical products are the pharmaceutical preparations MOUNJARO and ZEPBOUND.

The Complainant is the owner of trademark rights for MOUNJARO, which includes the following:

- United States trademark MOUNJARO No. 6809369, registered August 2, 2022, for goods in Class 5, including pharmaceutical preparations for the treatment of diabetes.
- European Union trademark MOUNJARO No. 018209187, registered September 8, 2020, for goods in Class 5, including pharmaceutical preparations.
- United Kingdom trademark MOUNJARO No. UK00003608193, registration from July 16, 2021, for goods in Class 5, including pharmaceutical preparations.

The Complainant has obtained at least ninety registrations for the MOUNJARO trademark (or its foreign language equivalents) across sixty countries. The Complainant has also obtained at least twenty-four registrations of the MOUNJARO Logo across twenty-two countries.

The Complainant is the owner of trademark rights for ZEPBOUND, which includes the following:

- United States trademark ZEPBOUND No. 7288373, registered January 23, 2024, for goods in Class 5, including pharmaceutical preparations for the treatment of obesity.
- European Union trademark ZEPBOUND No. 018688583, registered October 8, 2022, for goods in Class 5, including pharmaceutical preparations.
- New Zealand trademark ZEPBOUND No. 1211740, deemed registered December 6, 2022, for goods in Class 5, including pharmaceutical preparations.

The Complainant has obtained at least fifty-four registrations for the ZEPBOUND trademark (or its foreign language equivalents) across seventy-one countries. The Complainant has also obtained at least two registrations of the ZEPBOUND Logo across twenty-eight countries.

The Complainant registered the <mounjaro.com> domain name on October 21, 2019, and has used the domain name as the product website since at least as early as May 17, 2022. The Complainant registered the <zepbound.com> domain name on April 13, 2022, and has used the domain name as the product website since at least as early as November 9, 2023.

The United States Food and Drug Administration (the "FDA") announced its approval of the medication Tirzepatide under the brand name MOUNJARO 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 2022, and by the end of 2022, MOUNJARO product produced nearly USD 280 million in revenue. The FDA announced its approval of Tirzepatide under the ZEPBOUND brand for use in connection with injectable pharmaceutical products for treatment of obesity on November 8, 2023. The Complainant launched the product on December 5, 2023, and by the end of the 2023, the product had already produced over USD 175 million in revenue. Both brands received extensive media coverage of their launches.

At the time of the Complaint, ZEPBOUND product is only distributed in the United States, while MOUNJARO product is approved for distribution in: Australia, Canada, Germany, Japan, Kuwait, Poland, Saudi Arabia, Switzerland, the United Arab Emirates, and the United Kingdom.

The Respondent, located in the United States, registered the disputed domain names on the following dates: <mounjarouaepharmacy.org> on February 23, 2024, <buymounjaroonline.org> on March 1, 2024, <zepboundcanada.com> on March 11, 2024, and <zepboundonlinepharmacy.com> on March 11, 2024. The disputed domain names resolve to websites purporting to offer the Complainant's goods, but appear to offer gray market or counterfeit goods, and in jurisdictions where the product is not approved, or otherwise stating that the product is available for "people all over the world."

The domain name <buymounjaroonline.org> resolves to a website purporting to sell Mounjaro, including for purchase in Mexico. The domain name <mounjarouaepharmacy.org> purports to sell Mounjaro online to people "All over the World", without prescription. The domain name <zepboundcanada.com> resolves to a website purporting to sell Zepbound online, with its location in Canada. The domain name <zepboundonlinepharmacy.com> resolves to a website purporting to sell Zepbound online and without prescription, and with prices "lower than on the local Mexico market". It lists a company address in New Jersey, United States.

## 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 names.

Notably, the Complainant contends that its use and registration of the MOUNJARO and ZEPBOUND trademarks and domain names pre-date the Respondent's registration of the disputed domain names, as noted above. The disputed domain names are confusingly similar to the Complainant's marks in that they consist of the marks, followed by geographically descriptive and/or generic terms related to the Complainant's pharmaceutical business.

The Complainant alleges that the Respondent is not using the disputed domain names for legitimate business purposes, and have no rights or legitimate interests in the disputed domain names. There is no evidence that the Respondent is commonly known by the disputed domain names. The Respondent is neither using the disputed domain names in connection with a bona fide offering of goods or services nor making a legitimate noncommercial or fair use of the disputed domain names. The Respondent registered the disputed domain names to direct Internet traffic to websites to sell gray market or potentially counterfeit versions of the Complainant's products without a prescription.

The Respondent's use of the disputed domain names is not justified by the principle that a mark may be used legitimately without its owner's consent to promote a bona fide offering of goods placed on the market by its owners, as potentially outlined in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#). The Respondent's websites purport to offer the Complainant's goods, but appear to offer gray market or counterfeit goods. In addition, each site expressly offers product in jurisdictions where it is not approved or otherwise expressly states that product is available for "people all over the world." The Respondent fails to accurately disclose their relationship (or lack thereof) with the Complainant, along with lack of any such statement or disclaimer. Such lack of statement or disclaimer leads Internet users to falsely believe that the Respondent's websites are the Complainant's official websites, or that the Respondent is an authorized distributor of the Complainant's products.

Further confusion is caused by the Respondent's failure to identify themselves, along with lack of identifying information besides a copyright notice and email address. The failure to accurately identify the Respondent is further evidence of lack of rights or legitimate interests. The physical addresses that have been provided on the websites appear to be falsified, leading to unrelated businesses or excluding critical details.

Each site also exacerbates confusion by unauthorized use of the Complainant's marks and official marketing images in their website content, likely causing confusion as to whether the disputed domain names are

official websites for providing the Complainant's products. The marketing of the Complainant's products in jurisdictions where they are not legally available also serves as evidence that the Respondent lacks rights or legitimate interests. The websites also explicitly state that no prescription is required to purchase the prescription-only products. The Complainant alleges that it has not given the Respondent permission, authorization, consent or license to use the MOUNJARO and ZEPBOUND marks.

The Complainant contends that the MOUNJARO mark is widely recognized, and that there can be no doubt that the Respondent registered the disputed MOUNJARO domain names with knowledge of the Complainant's rights, particularly considering that the Respondent is purporting to sell the Complainant's own goods under domain names comprised of the Complainant's marks. This is, itself, indicative of bad faith registration and use.

Additionally, according to Policy paragraph 4(b)(iv), evidence of bad faith registration and use is shown when a domain name is registered in order to utilize another's well-known trademark for attracting Internet users to a website for commercial gain. The Respondent is using the disputed domain names to offer prescription-only products without a prescription, further supporting bad faith use. The content of the disputed websites uses the Complainant's trademarks, misleading users into believing that there is an association between the Complainant and the websites, and serves as evidence of an intentional attempt to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's marks.

The Respondent's use of the Complainant's marks is potentially harmful to the health of unsuspecting consumers who may purchase products through the Respondent's websites under the mistaken impression that they are dealing with the Complainant or an authorized distributor, and therefore, will be receiving safe and effective drugs approved by health authorities around the world. The Complainant's MOUNJARO and ZEPBOUND products are only available on a physician's prescription and are manufactured, labeled, and sold in strict compliance with the health authority laws and regulations. The Respondent's use is therefore a use in 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 marks are reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "uae", "pharmacy", "buy", "online", "canada", and "online pharmacy", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. These terms merely highlight locations where the Respondent is targeting consumers, or that it is an online pharmacy store for the sale of pharmaceuticals.

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 names. 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 names such as those enumerated in the Policy or otherwise.

According to the evidence submitted, the Respondent has used the disputed domain names in connection with websites promoting and offering for sale pharmaceuticals identical to those of the Complainant, without complying with relevant regulations, such as not requiring a physician’s prescription and offering for sale in jurisdictions where the products have not been legally approved for distribution. Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of counterfeit goods or illegal pharmaceuticals, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Furthermore, additional circumstantial evidence supporting the Complainant’s claim of no rights or legitimate interests by the Respondent is the Respondent’s misappropriated use of copyrighted images from the Complainant’s website, and that the goods are being sold without a prescription, which the Complainant’s goods require. [WIPO Overview 3.0](#), section 2.13.2.

Additionally, the composition of the disputed domain names which combines the Complainant’s trademarks with a geographic term and additional terms indicating that the disputed domain names are used to sell the Complainant’s goods online, suggests an affiliation with the trademark owner. Prior UDRP panels have 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; *Eli Lilly and Company v. Abdul Rauf Raza*, WIPO Case No. [D2024-0364](#).

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 names in bad faith, since the MOUNJARO and ZEPBOUND trademarks are highly distinctive and have acquired significant recognition in the pharmaceutical field in a relatively short period of time, based on extensive advertising along with significant revenue achieved. The use of the disputed domain names reinforces the recognition of

the MOUNJARO and ZEPBOUND trademarks. Additionally, the disputed domain names were registered after the Complainant obtained trademark rights, and subsequent to the Complainant's registration and use of domain names promoting its pharmaceutical products under the MOUNJARO and ZEPBOUND trademarks.

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. These circumstances include a domain name incorporating the complainant's mark plus an additional term such as a descriptive or geographic term, or one that corresponds to the complainant's area of activity, as well as the content of any website to which the domain name directs. Each of the disputed domain names contains a geographic term or corresponds to the Complainant's area of business activity, while each disputed website contains content which is likely to create a likelihood of confusion as to source with the targeted consumers of the Complainant's pharmaceutical products. Additional indicia of bad faith use by the Respondent is the targeting of consumers in countries where the pharmaceutical product has not been approved, as well as not requiring a prescription that is necessary for legally obtaining the products. All of these circumstances are likely to create confusion, which potentially endangers the safety of consumers, as well as tarnishing the reputation of the Complainant.

The Policy has enumerated a number of additional examples of bad faith, including a pattern of bad faith conduct, and intentionally attempting to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark. The Respondent has exhibited a pattern of bad faith conduct by registering two separate domain names containing the MOUNJARO trademark, as well as two domain names containing the ZEPBOUND trademark. The Respondent has also attempted to attract online consumers of the Complainant's pharmaceutical products for the sale of gray market and/or counterfeit goods, which behavior is manifestly considered evidence of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of counterfeit goods or illegal pharmaceuticals, impersonation/passing off, or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.2. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 <buymounjaroonline.org>, <mounjarouaepharmacy.org>, <zepboundcanada.com>, <zepboundonlinepharmacy.com> be transferred to the Complainant.

*/Gary Saposnik/*

**Gary Saposnik**

Sole Panelist

Date: July 8, 2024