

## ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Konge Joe  
Case No. D2024-3311

### 1. The Parties

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

The Respondent is Konge Joe, Konge Joe, United States.

### 2. The Domain Name and Registrar

The disputed domain name <buyzepboundonline.store> is registered with eNom, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 13, 2024. On August 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 13, 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 (Proxy Protection LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 14, 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 August 14, 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 August 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on September 6, 2024.

The Center appointed Ingrīda Kariņa-Bērziņa as the sole panelist in this matter on September 12, 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 an international producer of pharmaceutical preparations, including Zepbound, which is prescribed to treat obesity. The Complainant is the proprietor of numerous applications and registrations for the ZEPBOUND mark, including United States Trademark Registration No. 7288373 for ZEPBOUND (word mark), registered on January 23, 2024, for goods in class 5, claiming a date of first use of November 30, 2023, and European Union Trade Mark Registration No. 018688583 for ZEPBOUND, registered on October 8, 2022.

The Complainant operates a website at the domain name <zepbound.com>, registered on April 13, 2022. The Complainant states that it established a website at that domain name on November 9, 2023, following market authorization for the ZEPBOUND medication.

The disputed domain name was registered on January 8, 2024. At the time of the Complaint, it resolved to a website entitled “ZepboundOnlineShop”. The website stated, in part: “Achieve Your Weight Loss Goals with Zepbound” and purported to offer Zepbound products for sale. At the time of the Decision, access to the website was blocked.

#### **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 it enjoys rights in the ZEPBOUND mark from April 14, 2022, when it applied to register the trademark in the United States. Following market authorization on November 8, 2023, the ZEPBOUND product was first made available for sale in the United States on December 5, 2023. Since that time, the ZEPBOUND product has generated well over USD 1.7 billion in revenues. The disputed domain name reflects the Complainant’s ZEPBOUND mark together with the descriptive terms “buy” and “online”. The Respondent offers for sale products that appear to be counterfeit or gray market ZEPBOUND products. The ZEPBOUND product is only available for sale in the United States and the Respondent’s website offers international shipping. The Respondent is not connected to the Complainant and the Respondent’s website does not disclose that the Respondent has no relationship with the Complainant. Instead, the website misleads Internet users by purporting to offer the Complainant’s products for sale and making them available outside the United States. The launch of the ZEPBOUND product was widely covered by the press. The Respondent appears to have provided false contact information.

##### **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 Panel notes that the Complainant’s ZEPBOUND mark was registered at the time of the Complaint, which, according to UDRP practice, is the relevant date for purposes of evaluating the Complainant’s standing under the first element. [WIPO Overview 3.0](#), section 1.1.3.

The entirety of the 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 (here, “buy” and “online”) 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 name and the 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 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.

The Panel finds that the disputed domain name, which reflects the Complainant’s ZEPBOUND mark in its entirety plus the terms “buy” and “online”, resolved to a website featuring the Complainant’s ZEPBOUND mark and offering “Zepbound” products for sale. There is no evidence that the Respondent has any right to use the Complainant’s ZEPBOUND mark. Evidence of such activity indicates the Respondent’s lack of rights or legitimate interests.

Panels have held that the use of a domain name for illegal activity (here, claimed 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.

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.

Accordingly, in the present case the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s mark. The disputed domain name was registered shortly after the Complainant established rights in its ZEPBOUND trademark. It reflects the Complainant’s mark in its entirety plus a reference to “buy” and “online”, therefore implying a connection to the Complainant. Under these circumstances, the Panel finds that the disputed domain name was registered and used in 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 sale of counterfeit goods or illegal pharmaceuticals, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The record contains evidence that the disputed domain name resolved to a website featuring the Complainant's mark and purporting to offer for sale products of the Complainant that require prescription to countries where the pharmaceutical product is not available for sale. Such conduct is clearly indicative of bad faith use of the disputed domain name. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under 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 <buyzepboundonline.store> be transferred to the Complainant.

*/Ingrīda Kariņa-Bērziņa/*

**Ingrīda Kariņa-Bērziņa**

Sole Panelist

Date: September 26, 2024