

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Ajaro Evans, mounjao mounjaro, THE GREEN SOLUTION

Case No. D2024-3314

1. The Parties

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

The Respondents are Ajaro Evans and mounjao mounjaro, THE GREEN SOLUTION, Cameroon.

2. The Domain Names and Registrars

The disputed domain names <mounjaro-lilly.com> is registered with Hostinger Operations, UAB. The disputed domain name <mounjaro-pharma.com> is registered with Web Commerce Communications Limited dba WebNic.cc (altogether the “Registrars”).

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 Registrars a request for registrar verification in connection with the disputed domain names. On August 14, 2024, the Registrars transmitted by email to the Center their verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Domain Admin Whoisprotection.cc and Domain Admin Privacy Protect, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on August 14, 2024, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amended Complaint on the same date.

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 Respondents of the Complaint, and the proceedings commenced on August 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2024. The Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on September 12, 2024.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on September 18, 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 American pharmaceutical company headquartered in Indiana, United States, and has been in the pharmaceutical industry for over 145 years.

The Complainant's Mounjaro product is an injectable pharmaceutical product for the treatment of type two diabetes, approved by the United States Food and Drug Administration on May 13, 2022. In 2023, the Complainant's sales of MOUNJARO exceeded USD five billion globally.

The Complainant owns multiple trademark registrations for the MOUNJARO mark in 60 countries, including U.S. Registration No. 6,809,369, registered on August 2, 2022, with priority dating back to November 5, 2019, and United Kingdom Registration No. UK00003608193, filed on March 11, 2021, and registered on July 16, 2021.

The Complainant also owns multiple trademark registrations for the LILLY mark in 114 countries, including U.S. Registration No. 1,226,434, filed on December 7, 1981, and registered on February 8, 1983. The Complainant's rights in the LILLY mark in the U.S. date back to February 1, 1895.

The Complainant maintains an online presence through its domain names, including <lilly.com>, registered on May 10, 1991, and <mounjaro.com>, registered on October 21, 2019. These websites provide information about the Complainant's company and its pharmaceutical products.

The disputed domain name <mounjaro-pharma.com> was registered on August 3, 2023, and the disputed domain name <mounjaro-lilly.com> was registered on June 5, 2024. The content of the websites associated with the disputed domain names displays the Complainant's trademarks, copyright-protected images, and copies of the Complainant's marketing materials, imitating the look of the Complainant's official website. The websites of the disputed domain names offer the Complainant's MOUNJARO product for sale without a prescription, as well as competing third-party products. As of the date of this decision, <mounjaro-lilly.com> leads to an inactive website.

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:

(1) The disputed domain names are identical or confusingly similar to trademarks in which the Complainant has rights. The Complainant has rights to the MOUNJARO and LILLY trademarks, confirmed by registrations around the world. Each of the disputed domain names contains the MOUNJARO trademark in its entirety, simply adding the Complainant's well-known LILLY mark in the disputed domain name

<mounjaro-lilly.com> or the generic term “pharma” in <mounjaro-pharma.com>. This does not obviate a finding of confusing similarity.

(2) The Respondents have no rights or legitimate interests in the disputed domain names. The Complainant has not given the Respondents permission, authorization, consent, or license to use its marks. There is no evidence that the Respondents are commonly known by either of the disputed domain names. Moreover, the Respondents are neither using the disputed domain names in connection with a bona fide offering of goods and services, nor making a legitimate noncommercial or fair use of the disputed domain names. Instead, the Respondents registered the disputed domain names using a privacy-shielding service to direct Internet traffic and sell gray market or potentially counterfeit versions of the Complainant’s MOUNJARO product in jurisdictions where the product has not been legally approved for distribution (and where a prescription cannot be legally obtained). The Respondents carry on these activities while failing to disclose their lack of a relationship with the Complainant.

(3) The disputed domain names should be considered as having been registered and used in bad faith. The Respondents are purporting to sell the Complainant’s goods under disputed domain names comprising the Complainant’s marks, accompanied only by descriptive terms, which is indicative of bad faith registration and use. The Respondents are using the Complainant’s marks to drive Internet traffic to their websites under the disputed domain names to profit from the sale of gray market or counterfeit products. Registering disputed domain names that contain the Complainant’s marks is evidence that the Respondents have engaged in a pattern of registering domain names for commercial gain and confirms that the disputed domain names were registered and are used in bad faith.

The Complainant requests transfer of the disputed domain names.

B. Respondents

The Respondents did not reply to the Complainant’s contentions.

6. Discussion and Findings

6.1. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant’s request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant’s request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.2.

Upon the information available and the Panel’s belief, the Registrant of each disputed domain name is the same.

As regards common control, the Panel notes that both disputed domain names direct users to virtually identical websites offering to sell the Complainant's products alongside competitive products, and the same boxes of MOUNJARO product with Arabic text. Furthermore, the Panel also notes that both disputed domain names target the same trademark and follow the same composition pattern.

The Center has discharged its duties to notify the persons listed as registrants of the disputed domain names. The Respondents have not submitted a formal Response or objected to the consolidation request of the Complainant or to its arguments in support of the request.

As regards to fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

6.2 Substantive issues

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) that the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) that the disputed domain names were registered and are being used in bad faith.

The onus of proving these elements is on the Complainant even though the Respondent failed to submit a Response.

Paragraph 15(a) of the Rules directs the Panel to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

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.

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant has shown rights in respect of MOUNJARO and LILLY trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant's trademarks are recognizable 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.

The disputed domain name <mounjaro-lilly.com> incorporates the Complainant's MOUNJARO and LILLY marks in their entirety, with the only difference being the hyphen between the two marks. Similarly, the disputed domain name <mounjaro-pharma.com> consists of the Complainant's MOUNJARO mark along with the term "pharma", with the only difference being the hyphen.

In regard to the disputed domain name <mounjaro-pharma.com>, the addition of the term “pharma” to the Complainant’s MOUNJARO mark does not prevent the finding of confusing similarity either. See [WIPO Overview 3.0](#), section 1.8.

The Panel further notes that the generic Top-Level Domain (“gTLD”) “.com” is required only for technical reasons and is generally ignored for the purposes of comparison of the Complainant’s trademarks to the disputed domain name ([WIPO Overview 3.0](#), section 1.11.1).

In light of the above, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s trademarks and that the first element of paragraph 4(a) of the Policy is satisfied.

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.

Based on the available record, the Panel finds that the Respondent has no trademark rights related to the disputed domain names. The Panel also finds that the Respondent has not been commonly known by the disputed domain names.

The Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain names incorporating the Complainant’s marks. The Panel also takes into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way.

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.

Panels have held that the use of a domain name for illegal or fraudulent activity, here claimed as sale of gray market or illegal pharmaceuticals, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. Even if the products sold by the Respondent were genuine (which is highly unlikely given the prescription-basis through which such pharmaceuticals are sold), such use of the disputed domain name does not meet the requirements established by the “Oki Data Test”, because the websites to which the disputed domain names resolve do not disclose the lack of relationship between the Respondent and the Complainant and also offers third party competing products. [WIPO Overview 3.0](#), section 2.8. Moreover, the composition of the disputed domain names carries a risk of implied affiliation with the Complainant, which also prevents a finding of rights or legitimate interests. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, 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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt “to attract, for commercial gain, Internet users to [the respondent’s] website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [the respondent’s] website or location or of a product or service on [the respondent’s] website or location” is evidence of registration and use in bad faith.

Based on the evidence presented, the disputed domain names were registered and are being used in bad faith. The disputed domain names were registered long after the Complainant registered its MOUNJARO and LILLY trademarks, and the use of the Complainant’s trademarks cannot be a coincidence. The LILLY trademark has been used by the Complainant to conduct its business since at least February 1895. As for the MOUNJARO mark, the Complainant has several trademark registrations predating the disputed domain names. The Panel draws attention to a prior UDRP panel’s finding that the MOUNJARO mark is “widely recognized” and that “there can be no doubt that the Respondent registered the disputed [D]omain [N]ame with knowledge of the Complainant’s rights”, particularly considering that the Respondent is purporting to sell the Complainant’s goods (albeit in jurisdictions where they are not legally approved for distribution) under the disputed domain names that comprise the Complainant’s mark accompanied only by descriptive terms. This, in itself, is 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](#).

Noting that that the Complainant’s trademarks predate the registration of the disputed domain names and considering that the disputed domain names resolve to a website featuring the Complainant’s MOUNJARO mark and depictions of its products as well as third party competitive products, it is inconceivable that the Respondent could have registered the disputed domain names without knowledge of the Complainant’s well-known trademarks. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain names resolved to websites that appeared to sell pharmaceutical products under the trademark MOUNJARO and thereby used the Complainant’s logos and copyright-protected images without disclosing the Respondent’s lack of a relationship with the Complainant. The impression given by these websites would cause Internet users to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. The Panel holds that by using the disputed domain names, 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 as to the source, sponsorship, affiliation, or endorsement of its websites in the sense of Policy, paragraph 4(b)(iv).

Moreover, panels have held that the use of a domain name for illegal activities, such as in the present case – selling prescription drugs without requiring a prescription and/or selling to countries where the pharmaceutical product does not have marketing authorization – constitutes use in bad faith. [WIPO Overview 3.0](#), section 3.4. Despite the Respondent’s recent removal of the content from its website to which the disputed domain name <mounjaro-lilly.com> resolved, panels have found that non-use of a domain name does not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds that the Respondent’s registration and use of the disputed domain names constitutes bad faith under the Policy.

Based on the available record, 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 names <mounjaro-lilly.com> and <mounjaro-pharma.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: September 30, 2024