

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Hacketty Mery
Case No. D2024-3319

1. The Parties

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

Respondent is Hacketty Mery, United States.

2. The Domain Name and Registrar

The disputed domain name <zepboundmounjarowegovyweightloss.com> (hereinafter “Disputed Domain Name”) is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 13, 2024. On August 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 14, 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 Complainant on August 15, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on August 19, 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 Respondent of the Complaint, and the proceedings commenced on August 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 12, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 19, 2024.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on September 26, 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

Complainant, one of the largest pharmaceutical companies in the world, sells ZEPBOUND and MOUNJARO, two related pharmaceutical products. Although both contain Tirzepatide, a GLP-1 receptor agonist they are approved for different conditions. The MOUNJARO product is approved by the United States Food and Drug Administration (“FDA”) for treatment of type 2 diabetes. The ZEPBOUND product is approved for treatment of obesity.

At the time of this decision, the ZEPBOUND product is only distributed in the United States, while the MOUNJARO product is approved for distribution in several other countries.

Complainant owns United States trademark registrations for both of these products, including United States Trademark Registration No. 7,288,373 (registered on January 23, 2024) for the ZEPBOUND trademark and United States Trademark Registration No. 6,809,369 (registered on August 2, 2022) for the MOUNJARO trademark. Complainant also own registrations for these trademarks in many other countries. Both ZEPBOUND and MOUNJARO are invented words that have no dictionary meaning.

Another pharmaceutical giant, Novo Nordisk, sells two products - WEGOVY and OZEMPIC - that are similar to, and compete with, Complainant’s ZEPBOUND and MOUNJARO products, although the active ingredients are not identical. In place of Tirzepatide, both Novo Nordisk products include a different GLP-1 receptor agonist – Semaglutide - as the active ingredient.

Since its launch in June of 2022, the MOUNJARO product has produced more than USD seven billion in sales revenue through June 2024. Since its launch on December 5, 2023, the ZEPBOUND product had generated more than USD 1.8 billion in sales revenue through June 2024. Both the ZEPBOUND and MOUNJARO products have generated substantial media attention.

Complainant owns the domains <mounjaro.com> and <zepbound.com> which resolve to websites that Complainant uses to publish information about and advertise the products.

The Disputed Domain Name, which Respondent registered on March 30, 2024, is a combination without spaces of Complainant’s trademarks ZEPBOUND and MOUNJARO, followed by third party Novo Nordisk’s trademark WEGOVY, and then the descriptive phrase “weight loss.”

The Disputed Domain Name resolves to a website (hereinafter sometimes the “Disputed Webpage”) that purports to offer Internet Visitors links to purchase ZEPBOUND products online from countries other than the United States at prices below those available in the United States.

There is no mention of MOUNJARO products in text on the Disputed Webpage, but images of MOUNJARO products are displayed next to text about ZEPBOUND products. Similarly, there is no mention in text of WEJARO products on the Disputed Domain Name, but images of WEJARO products are displayed next to text about ZEPBOUND products. Images of OZEMPIC products and packaging are also displayed next to text about ZEPBOUND products. All of these displayed images clearly show trademark symbols such as “®” or “TM” on the product packaging.

The Disputed Webpage displays images of OZEMPIC packaging and a banner that reads “Buy Ozempic Overseas,” and there are FAQs about OZEMPIC.

The information published on the Disputed Webpage incorrectly asserts that Complainant's ZEPBOUND product contains Semaglutide, the active ingredient in the Novo Nordisk products WEGOVY and OZEMPIC. The active ingredient in ZEPBOUND is Tirzepatide.¹

The Whois information provided by the Registrar disclosed an address in New York given by the registrant. Complainant alleges with supporting evidence that the given address does not exist in New York, and that Complainant's investigation could not find any information that tied the purported address to any one named "Hacketty Mery".

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

B. Respondent

Respondent did not reply to 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 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.

Complainant has shown rights in respect of both the MOUNJARO and ZEPBOUND trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Both of these trademarks are reproduced in their entirety within the Disputed Domain Name. The Panel finds that both trademarks are recognizable within the Disputed Domain Name. Accordingly, the Disputed Domain Name is confusingly similar to Complainant's trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Disputed Domain Name also includes elements other than Complainant's two registered trademarks. Respondent has included WEGOVY, a registered trademark for a competitive product owned by another global pharmaceutical company. This extra element does not prevent a finding of confusing similarity between the Disputed Domain Name and Complainant's trademarks for the purposes of the Policy. *Eli Lilly and Company v. Aleksandr Vasilev*, WIPO Case No. [D2024-0646](#) (finding the <ozempic-mounjaro.com> domain – which contained Novo Nordisk's OZEMPIC trademark – confusingly similar to Complainant's MOUNJARO trademark). It is also well settled that the addition of the descriptive phrase "weight loss" does not prevent a finding of confusing similarity. See Section 1.8 of [WIPO Overview 3.0](#) (addition of descriptive term to domain with recognizable trademark does not obviate confusion).

¹ Complainant's Annex 7 contains articles that explain that the active ingredient in Novo Nordisk's WEGOVY and OZEMPIC is semaglutide. The active ingredient in Complainant's ZEPBOUND product is tirzepatide. Although these two active ingredients are similar, they are not identical. One Associated Press article explains: "The drugs tirzepatide in Zepbound and Mounjaro and semaglutide in Wegovy and Ozempic work by mimicking hormones that kick in after people eat to regulate appetite and the feeling of fullness. Both imitate a hormone called glucagon-like peptide-1, known as GLP-1. Tirzepatide targets a second hormone, called glucose-dependent insulinotropic polypeptide, or GIP." Annex 9, at PDF page 79/110.

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 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 that Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted 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.

Respondent’s use of the Disputed Domain Name does not qualify as a bona fide offering of goods placed on the market by its owner under the test outlined in *Okidata Americas, Inc v. ASD, Inc*, WIPO Case No. [D2001-0903](#). Respondent fails many of the *Okidata* requirements, but the Panel focuses on the most fundamental deficiency. Respondent offers on the Disputed Webpage products, including OZEMPIC and WEGOVY, that compete against Complainant’s MOUNJARO and ZEPBOUND products. Using the Disputed Domain Name as a platform to promote the sale of these directly competitive products is not allowed under the *Okidata* test. See e.g. *Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait*, WIPO Case No. [D2023-3670](#). Respondent exacerbates the harmful consequence of this infraction by erroneously describing the active ingredient in Complainant’s products, falsely asserting that Complainant’s products include the active ingredient found in the competing products.

Complainant identifies several other reasons why Respondent fails to satisfy *Okidata*, but given this most egregious failing, there is no need to address other defects.

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.

The Panel finds that the Disputed Domain Name was registered in bad faith. Respondent was indisputably aware of and targeting Complainant and its rights when it registered the Disputed Domain Name. Respondent’s stated intent was to sell Complainant’s ZEPBOUND product. There is non-trademark meaning for either ZEPBOUND or MOUNJARO, both of which are invented words that have no dictionary meaning that Respondent might have exploited. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#). There is, therefore, no benign explanation for including these invented words in the Disputed Domain Name.

Complainant also offers substantial evidence that both the ZEPBOUND and MOUNJARO trademarks are well known. Prior Panels have credited similar evidence as a basis for finding that these trademarks are well

known. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#) (MOUNJARO “widely recognized”); *Eli Lilly and Company v. Carlos Gram*, WIPO Case No. [D2024-1028](#) (“substantial media coverage” for ZEPBOUND). It follows that Respondent was likely aware of Complainant when it registered the Disputed Domain Name.

In addition, the un rebutted evidence demonstrates that Respondent gave false contact information when Respondent registered the Disputed Domain Name, which supports a finding of bad faith registration. [WIPO Overview 3.0](#) section 3.6. See also *dm-drogerie markt GmbH + Co. KG v. Aleksey Maksimyyuk*, WIPO Case No. [D2011-0589](#).

The Panel also finds that Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant’s trademarks. Respondent is using Complainant’s trademarks embedded in the Disputed Domain Name to attract Internet users to the Disputed Website where Respondent promotes the sale of not only Complainant’s products, but also promotes the sale of competitive products OZEMPIC and WEGOVY. This is bad faith use under Policy paragraph 4(b)(iv).

These reasons are sufficient to support the Panel’s finding of bad faith registration and use. There is no need to address other contentions.

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

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: October 10, 2014