

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Priscila Santana  
Case No. D2024-4480

### **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 Priscila Santana, Brazil.

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

The disputed domain name <mounbrasil.online> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 30, 2024. On October 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 1, 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 (Domain Admin, WHOIS IDCPrivacy Service c/o Integrated Data) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 1, 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 November 1, 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 November 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 26, 2024.

The Center appointed Reyes Campello Estebaranz as the sole panelist in this matter on November 29, 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 leading pharmaceutical company headquartered in Indiana, United States. The Complainant produces and commercializes its medications and treatments under various brands, and it operates internationally.

One of the Complainant's products is an injectable treatment of type two diabetes, which was approved by the United States Food and Drug Administration on May 13, 2022, and was launch in June 2022 under the brand MOUNJARO. The MOUNJARO injectable treatment is a prescription-only medicine that, additionally to the treatment of type two diabetes, contributes to weight lost in the treatment of obesity, and it has obtained considerable sales revenue since its launch. In the first half of 2023, the Complainant's sales of MOUNJARO exceeded USD 5 billion globally. The Panel under its general powers has consulted the Complainant's official website at "www.mounjaro.com".

Per the Complaint, the MOUNJARO treatment has already been approved for distribution in other jurisdictions outside the United States. In Brazil (country where the Respondent is located according to the Registrar's verification), the brand was approved (on September 25, 2023) by the competent authorities, though the product was not yet available for distribution and sale at the time of filing the Complaint (on October 30, 2024).

The Complainant owns numerous trademark registrations for its brand MOUNJARO, including United States Trademark Reg. No. 6809369, MOUNJARO, word, registered on August 2, 2022, in Class 5; and Brazil Trademark Reg. No. 919475787, MOUNJARO, word, registered on November 24, 2020, in Class 5; (collectively hereinafter referred as the "MOUNJARO mark").

Prior decisions under the Policy have recognized the international widely known or well-known character of the MOUNJARO mark.<sup>1</sup>

The Complainant further owns the domain name <mounjaro.com> (registered on October 21, 2019), which resolves to its official website for the MOUNJARO products.

The disputed domain name was registered on September 20, 2024, and it is currently apparently inactive resolving to an Internet browser error message. According to the evidence provided by the Complainant, the disputed domain name previously resolved to a website, in Portuguese language, purportedly offering MOUNJARO products in Brazil. This website indicated, "Mounjaro antecipado no Brasil. Sua clínica cumpriu os requisitos da MounBrasil? RECEBA NO LOCAL DESEJADO Tirzepatide Mounjaro. Da MounBrasil, direto para o seu consultório. ORIGINAL", which can be translated as "Mounjaro anticipated in Brazil. Did your clinic meet MounBrazil's requirements? RECEIVE AT YOUR DESIRED LOCATION Tirzepatide Mounjaro. From Mounbrazil, straight to your office. ORIGINAL". This website did not include any reference to its lack of relationship with the Complainant or the MOUNJARO mark, nor did it include any information about the owner of the disputed domain name or that of the website.

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<sup>1</sup>See, e.g., *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali, and Rauf Bhatti*, WIPO Case No. [D2023-3674](#); *Eli Lilly and Company v. Ajaro Evans, mounjao mounjaro, THE GREEN SOLUTION*, WIPO Case No. [D2024-3314](#); *Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait*, WIPO Case No. [D2024-3306](#); *Eli Lilly and Company v. frank maxwel, all freen*, WIPO Case No. [D2024-0412](#); and *Eli Lilly and Company v. Janni Louche*, WIPO Case No. [D2023-3787](#).

## 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 the disputed domain name is confusingly similar to the MOUNJARO mark, as it consists of a shortened version of this mark with the geographical term "brazil", which does not prevent a finding of confusing similarity. The MOUNJARO mark is recognizable in the disputed domain name and the content of the website associated with the disputed domain name targets the Complainant by offering gray market or counterfeit versions of the MOUNJARO treatment, which confirms the confusing similarity.

The Complainant further contends the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not authorized to use the MOUNJARO mark, there is no evidence that it is commonly known by the disputed domain name, and the disputed domain name is not used for a legitimate business. The Respondent sells gray market or potentially counterfeit versions of the MOUNJARO product without any apparent prescription in Brazil, where this product is not yet available for distribution. The Respondent fails to meet the requirements set forth in *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Finally, the Complainant contends the disputed domain name was registered and is being used in bad faith. The reputation of the MOUNJARO mark, the composition of the disputed domain name comprised of a shortened version of this mark, and the content of the Respondent's website point to a targeting to this reputed trademark. The Respondent's activity is illegal, as it apparently offers prescription-only products without prescription in a jurisdiction where the Complainant's products are not yet available. The Respondent's website generates confusion or a false affiliation with the Complainant and its trademark in an intentional attempt to misleadingly generate traffic for a commercial gain. The Respondent's actions show opportunistic bad faith and are potentially harmful to the health of unsuspecting consumers. The MOUNJARO treatment is only available on a physician's prescription and is manufactured, labeled, and sold in strict compliance with the health authorities' laws and regulations; the Respondent and its website omit these guarantees. The Brazilian health authorities and physicians have noted the presence of counterfeit pharmaceutical products in Brazil and have issued warnings against the purchase of not yet available pharmaceutical products over the Internet.

### B. Respondent

The Respondent did not reply to the Complainant's contentions.

## 6. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, inter alia, in paragraph 10 of the Rules.

### 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, namely the MOUNJARO mark. [WIPO Overview 3.0](#), section 1.2.1.

The first half of the mark (“moun”) is reproduced in the disputed domain name and the second half of the mark is substituted by the geographical term “brazil”. The Panel finds the main distinctive part of the mark is recognizable 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, the geographical term “brazil”, may bear on assessment of the second and third elements, the Panel finds the addition of such term 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 further finds the content of the website that was linked to the disputed domain name confirms the confusing similarity. The content of the website associated with the disputed domain name is usually disregarded in the assessment of confusing similarity under the first element, albeit, in some instances, such content can be taken into account to confirm confusing similarity, whereby it appears prima facie that the Respondent seeks to target a trademark through the disputed domain name. The Panel finds this is the case here, as the circumstances and evidence in the record show a targeting to the MOUNJARO mark through the disputed domain name. [WIPO Overview 3.0](#), section 1.15.

Therefore, 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 notes nothing in the record that may indicate the Respondent has any rights or legitimate interest in respect of the disputed domain name or the terms “mounbrazil” or “moun Brazil”. These terms share no similarities with the Respondent’s name, and nothing in the record indicates the Respondent may be commonly known by these terms. The Panel, under its general powers, has further corroborated through a search over the Global Brand Database, that the Respondent owns no trademark rights over the terms “mounbrazil” or “moun Brazil”.<sup>2</sup>

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<sup>2</sup>Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8.

The Panel further notes the disputed domain name is inactive, as it resolves to an Internet browser message. However, according to the evidence provided by the Complainant, the disputed domain name has been used in connection to a website, in Portuguese language, purportedly offering for sale the MOUNJARO medicine without prescription and before its sale authorization by the Brazilian competent authorities. The Panel further notes the Respondent's website included prominent references to the MOUNJARO mark with no reference to its lack of relationship with the Complainant and this reputed trademark, and with no information about the owner of the website or that of the disputed domain name.

The Panel finds such use of the disputed domain name generates a risk of confusion or affiliation with the Complainant, its products and its reputed trademark, which precludes considering it a bona fide offering of goods or services under the Policy.

The Panel further notes the additional term included in the disputed domain name, the geographical term "brazil", and even the use of the generic Top-Level Domain ("gTLD") ".online", contributes to the confusion or affiliation with the Complainant and its MOUNJARO mark. The Complainant operates in Brazil and has already obtained authorization for the use of its MOUNJARO mark in this country, albeit the authorization for its products sale was still pending when this proceeding started and when the Respondent registered and used the disputed domain name in connection to an "anticipated sale" of the MOUNJARO treatment in Brazil. The Panel finds the disputed domain name gives the impression of being owned by or associated to the Complainant, as a website associated with the online anticipated commercialization of its pharmaceutical products in Brazil, owned and/or operated by the Complainant or one of its subsidiaries, and such use cannot be considered a bona fide offering of goods or services under the Policy.

It is further to be noted that, according to the Complainant's allegations, the Panel finds the circumstances of this case point to the use of the disputed domain name in connection to an illegal activity that could potentially harm the health of unsuspecting Internet consumers, and dilute the Complainant's reputation in the MOUNRAJO pharmaceutical treatment. The Respondent's offer of an "anticipated sale" of gray market or potentially counterfeit versions of the MOUNJARO treatment, without any apparent prescription and in a country where this product was not yet available for distribution, is potentially a treat to the health of its customers, as these products would not necessarily comply with all health regulations establish in that country; and, accordingly, it may damage the Complainant's image and reputation. The Panel finds particularly threatening the sale of potentially counterfeit drugs, or even gray market prescription-only drugs, in either case without a proper analysis of the patient condition by a physician, an informed consent of the patient, and probably even without a proper package and prospect in the language of the patient. In this respect, panels have held that the use of a domain name for an illegitimate or illegal activity here claimed sale of prescription-only drugs without prescription in a country where distribution was not yet authorized, and the sale of counterfeit goods or illegal pharmaceuticals, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Panel finds nothing in the record or in its assessment of this case indicates the existence of any rights or legitimate interests on the Respondent, and the composition of the disputed domain name as well as the content of the website that was linked to the disputed domain name indicate targeting of the Complainant and of its MOUNJARO mark and generates confusion.

The Panel, therefore, 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 notes the MOUNJARO mark has been considered internationally widely known or well-known by prior decisions under the Policy.<sup>3</sup> The Panel further notes the Complainant's MOUNJARO treatment has achieved remarkable sales and revenues over the relatively short time it is on the market, and any search over the Internet reveals the Complainant, its MOUNJARO mark, and the successful pharmaceutical treatment commercialized under this trademark. The Panel, under its general power, has corroborated the last with a search over the Internet for the term "mounjaro".

The Panel thus finds the Respondent likely knew of the Complainant and its trademark and deliberately registered the disputed domain name in bad faith. Furthermore, in the present case, the Panel notes that the content of the Respondent's website and the composition of the disputed domain name reveal an intention on the part of the Respondent of targeting the Complainant and its reputed trademark in an effort to generate confusion or a false affiliation for a commercial gain.

The Panel finds the inclusion of the geographical term "brazil", country where the Complainant has already obtained part of the necessary authorizations to commercialize its MOUNJARO pharmaceutical and is in the process of being able to sale, and the content of the Respondent's website, which purportedly tries to benefit from the circumstance the Complainant's products are not yet available in that jurisdiction to offer an "anticipated sale" of MOUNJARO product, point to the Complainant and its reputed trademark with an intention on the part of the Respondent to confuse Internet users seeking or expecting the Complainant.

The Panel finds the Respondent registered and has used the disputed domain name targeting the Complainant and its trademark in bad faith with the intention of generating a risk of confusion and false affiliation with the reputed mark to increase the traffic to the Respondent's website for a commercial gain.

Furthermore, panels have held that the use of a domain name for illegitimate or illegal activity here, claimed sale of prescription-only drugs without prescription in a country where the distribution is not yet authorized and the sale of counterfeit goods or illegal pharmaceuticals, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Regarding the current apparent non-use of the disputed domain name, panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness, continuous use, and reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Therefore, having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy, and 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 <mounbrasil.online> be transferred to the Complainant.

*/Reyes Campello Estebarez/*

**Reyes Campello Estebarez**

Sole Panelist

Date: December 4, 2024

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<sup>3</sup>See footnote number 1, *supra*.