

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Eurofit Hardwares Pty Ltd

Case No. DAU2024-0032

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 Eurofit Hardwares Pty Ltd, Australia.

2. The Domain Name and Registrar

The disputed domain name <mounjarobuyonline.com.au> is registered with Domain Directors Pty Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 29, 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 October 31, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 1, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was November 21, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 22, 2024.

The Center appointed Staniforth Ricketson as the sole panelist in this matter on November 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

The Complainant is a large multinational pharmaceutical products company with a principal place of business in Indianapolis, Indiana, United States. According to evidence filed, it has over 90 registrations of the MOUNJARO trade mark (or its foreign language equivalents) across 60 jurisdictions, including the United States and Australia, and has 24 pending applications for the MOUNJARO mark across another 24. These marks are registered for use in connection with pharmaceutical preparations for the treatment of diabetes. These registrations date from 2019; in the case of Australia, trade mark registration No. 2080191 is registered from April 7, 2020, with a priority date of November 5, 2019, in class 5 (“pharmaceutical preparations” for a wide range of conditions, including diabetes and obesity).

According to further evidence filed, the MOUNJARO brand product received approval for use in connection with injectable pharmaceutical products for the treatment of type 2 diabetes on May 13, 2022. Since this time, similar approvals from relevant governmental authorities for distribution of MOUNJARO brand products have been obtained in the following countries outside the United States: Australia, Canada, Germany, Japan, Kuwait, Poland, Saudi Arabia, Switzerland, the United Arab Emirates, and the United Kingdom. Sales of the MOUNJARO product since its launch have been extensive: more than USD 5,160,000,000 in 2023 and more than USD 4,897,000,000 in the first half of 2024. Media coverage of the launch of the product has also been extensive, including over the Internet where products are available at the domain name <mounjaro.com>. This domain name was registered on October 21, 2019, and has been used as a website to advertise and market the Complainant’s products since at least May 17, 2022.

The disputed domain name <mounjarobuyonline.com.au> was registered by the Respondent on May 20, 2024 and resolves to a website on which MOUNJARO branded injectable products) are advertised purportedly for sale and distribution both in and outside of Australia for control of diabetes (to increase insulin protection in humans) as well as to control obesity. The products on the website appear to be made available without prescription and there is no reference on the website to the fact that the Respondent has no relationship to the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant submits that all three of the grounds specified in par 4(a)(i)-(iii) of the Policy are made out, and that the disputed domain should be transferred to it.

As to paragraph 4(a), the Complainant refers to its extensive trade mark registrations across multiple jurisdictions, including Australia, for the mark MOUNJARO with respect to pharmaceutical products, and asserts that the disputed domain name is confusingly similar to its mark. In this regard, it submits that the country code Top-Level Domain “.com.au” suffix is to be disregarded in making the required comparison, and submits further that the addition of the descriptive terms “buy” and “online” does not obviate a finding of confusing similarity, particularly in a case such as the present, where the Complainant’s mark is reproduced in its entirety in the disputed domain name. In support of this submission, the Complainant points also to the “highly distinctive” character of the MOUNJARO mark as an invented word and the greater likelihood of confusion where this is used in the disputed domain name.

As paragraph 4(a)(ii), the Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name. It argues that there is no evidence that the Respondent is commonly known by the disputed domain name and that it is not using the disputed domain name in connection with a bona fide offering of goods or service or that it is otherwise making a legitimate noncommercial or fair use of the disputed domain name. In so far as the Respondent is purporting to offer pharmaceutical products under the MOUNJARO brand on its website, this is not with the authorisation of the Complainant and it is also accompanied by displays of the Complainant's MOUNJARO logo and other images, which fail to disclose the Respondent's relationship, or rather lack of relationship, with the Complainant. The goods displayed on the Respondent's website can therefore only be gray market or potentially counterfeit goods. In this regard, the Complainant draws attention to the fact that its MOUNJARO products are available in a limited number of countries on physician's prescription while the Respondent's website purports to offer them without prescription, heavily discounted, and for "worldwide shipping". The Complainant submits that there is nothing here that might support the argument that the Respondent is making a bona fide offering of goods placed on the market by its owner, that is, of gray goods, and that none of the conditions enunciated in the earlier WIPO Panel decision of *Oki Data Americas, Inc. v ASD, Inc.*, WIPO Case No. [D2001-0903](#), apply here. Moreover, the Complainant submits that the Respondent has registered the disputed domain name to direct Internet traffic to a website that likely sells gray goods or even counterfeit products while suggesting that this is the Complainant's official website in Australia. Given that the Respondent registered the disputed domain several years after the Complainant's multiple trade mark registrations throughout the world, the Complainant submits that this amounted to constructive knowledge of the Complainant's trade mark on the part of the Respondent and therefore obviates any argument that it had a legitimate interest in the disputed domain name when registering it (citing here *eBay Inc. v SGR Enterprises and Joyce Ayers*, WIPO Case No. [D2001-0259](#)).

As to paragraph 4(a)(iii), some of the submissions made by the Complainant in relation to rights or legitimate interests under paragraph 4(a)(ii), are also relevant here. The Complainant submits that the application for registration must have been made in bad faith with knowledge of the Complainant's mark, having regard to the extensive marketing the Complainant's MOUNJARO products in Australia and around the world in the period before the disputed domain name was registered. Further, it submits that the circumstances outlined in paragraph 4(b)(iv) of the Policy point to bad faith registration and use where the disputed domain name is being used to drive Internet traffic to the Respondent's website "in order to profit from the sale of gray market or otherwise counterfeit products, all while concealing its identity". The Complainant also submits that the Respondent's advertising of prescription-only products without prescription is evidence of bad faith, as this is potentially unlawful as well as dangerous to public health. Furthermore, the Complainant submits that the content of the Respondent's website misleads Internet users into believing that there is an association with the Complainant, or that this is even an "official" website of the Complainant for Australia and that this is further evidence of bad faith registration and use.

B. Respondent

The Respondent has not submitted any response to the Complaint.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following (these are cumulative requirements):

- (i) the disputed domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered or subsequently used in bad faith.

When a respondent has defaulted, and in the absence of exceptional circumstances, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint. Paragraph 15(a) of the Rules then requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable. Limited factual research of publicly-available online resources may also be conducted by the Panel to confirm or elaborate upon matters alleged by the parties.

A. Identical or Confusingly Similar

There are two parts to the inquiry required under paragraph 4(a)(i): the Complainant must demonstrate that it has rights in a name, trade mark or service mark, and, if so, the disputed domain name must be identical or confusingly similar to the trade mark.

As to the first part of this requirement, the Panel accepts that the Complainant has established that it has rights in a significant number of trade marks comprising the word MOUNJARO registered in respect of pharmaceutical preparations in a multitude of jurisdictions, including Australia.

As to the issue of identity or confusing similarity, this requires a comparison and assessment of the disputed domain name itself with the Complainant's trade mark: see for example, *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#). In undertaking this assessment in the present proceeding, the addition of the second level domain suffix ".com.au" is to be disregarded as this is a functional requirement of the domain name system: see further *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, supra; *GoodData Corporation v Chris Gartlan*, WIPO Case No. [DAU2023-0003](#). Furthermore, previous panels have held consistently that domain names are identical or confusingly similar to a trade mark for the purposes of the Policy "when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).¹ See also *Bayerische Motoren Werke AG ("BMW") v. Registration Private, Domains By Proxy, LLC / Armands Piebalgs*, WIPO Case No. [D2017-0156](#). In the present case, the disputed domain contains the mark MOUNJARO in its entirety and the additional descriptive words "buy" and "online" do nothing to prevent the finding of confusing similarity.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's registered trade marks and that this part of the paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides that the following circumstances may be situations in which a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or
- (iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

¹Given the similarities between the .auDRP and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel finds UDRP precedent generally to be relevant to this case (except to the extent of relevant differences between the policies, such as the absence of a conjunctive requirement for bad faith), including the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition. See *Shenzhen Baseus Technology Co. Ltd v. Light arose*, WIPO Case No. [DAU2024-0007](#).

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The Complainant bears the onus of proving this requirement of the Policy, as is the case for each of the other elements. At the same time, panels have also consistently recognized the difficulties that arise where a party has to prove a negative, particularly in situations where much of the relevant information is in, or likely to be in, the possession of the respondent, rather than the complainant. In general, then, it is usually enough for a complainant to state a prima facie case against the respondent under this head, with the evidential burden then shifting to the respondent to rebut that case. See e.g., *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, supra; *Wal-Mart Stores, Inc. v. WalMart Careers, Inc.*, WIPO Case No. [D2012-0285](#); *AW Faber-Castell (Aust) Pty Ltd. v. Pen City Pty Ltd. / Atf Diblasi Jones Unit Trust*, WIPO Case No. [DAU2013-0018](#); *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. [D2015-1149](#).

In the present case, the Respondent has not filed a Response or provided evidence as to any rights or legitimate interest that it may have in the disputed domain name. Accordingly, the Panel can only consider the Complaint and evidence that has been provided by the Complainant. This consists of screenshots of the website to which the disputed name resolves. As already noted, on this website the Respondent purportedly offers MOUNJARO brand products for sale both inside and outside Australia.

The Panel accepts the Complainant's submission that there is no evidence that the Respondent is commonly known by the disputed domain name (paragraph 4(b)(ii)). There is also nothing in the record to suggest that, prior to notice of the dispute, the Respondent had made any use of the disputed domain name to make a bona fide offering of goods. In this regard, the Complainant has made extensive submissions relating to the Respondent's website, with many references to prior panel decisions (including several initiated by the Complainant in relation to its MOUNJARO mark), arguing that the Respondent's use of the disputed domain does not show any legitimate right or interest in that name. It is possible that, in some circumstances, sales and distribution of a complainant's products by an unauthorised, rather than an authorised, reseller of those products ("gray goods") might be a legitimate use of a name comprising the Complainant's mark. Previous panels have recognised this possibility, but at the same time they have articulated criteria that should be applied here for a finding that such use is bona fide. Thus, in the oft-cited *Oki Data* case (*Oki Data Americas, Inc. v ASD Inc.*, supra) referred by the Complainant, the panel held that a reseller, distributor or service provider using a domain name containing the complainant's trade mark to undertake sales or provide repair or other services relating to those goods could be making a bona fide offering of goods and services and thus have a legitimate interest in the disputed domain name, if the following requirements are satisfied:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trade marked goods or services;
- (iii) the site must accurately and prominently disclose the registrant's relationship with the trade mark holder; and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trade mark.

These are cumulative, not alternative, requirements. See further the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.8.1, and the other panel decisions noted there. See also *Jaguar Land Rover Limited v F.W.D. Vehicles Pty. Ltd. and High Ground Vehicles Pty. Ltd.*, WIPO Case No. [DAU2016-0038](#).

On the evidence before the Panel, it finds that these conditions are not satisfied. First, while the goods on the Respondent's website are MOUNJARO products, it is unclear, as the Complainant submits, whether they are "gray market" goods or counterfeit products, given that they appear to be available without prescription. They are also available at huge discounts (up to 90%). As these products, if distributed in Australia by the Complainant, would only be available on prescription, this indicates that the products advertised on the Respondent's website are not those of the Complainant and there may also be doubts as to whether they have received the approval of the relevant regulatory authority in Australia or that of any other country from which they have been obtained (noting that such approvals apply only in a limited number of countries). Accordingly, the possibility arises that these goods may be more than "gray market" goods and could potentially be counterfeit products.

Secondly, the third condition referred to in *Oki Data* is clearly not fulfilled: the Respondent's website uses the MOUNJARO logo and other material in such a manner as to suggest that it is somehow linked to the Complainant as an official or authorised Australian distributor. In particular, the heading to the website is "Mounjaro Buy Online Australia". There is nothing here to indicate the position is, in fact, the opposite, namely that there is no relationship with the Complainant. For a recent panel decision to similar effect, see *Physio Control, Inc. v Dynamed Pty Ltd, Phillip James Brumby*, WIPO Case No. [DAU2016-0018](#). The website also has no information that clearly identifies who the Respondent is, while the email address provided is only a general one linked to the disputed domain name and the physical address given appears to be that of an unrelated business.

Thirdly, an inspection of the Respondent's website, with its prominent use of MOUNJARO logos and the MOUNJARO trade mark, including the heading "Mountjaro Buy Online Australia", readily gives rise to the more likely than not possibility that the Respondent is trying to "corner" the market in Australia in a domain name that reflects the Complainant's mark (the fourth *Ok Data* condition).

The Panel therefore concludes that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interest in the disputed domain name.

C. Registered or Subsequently Used in Bad Faith

In contrast to the Uniform Domain Name Dispute Resolution Policy, under paragraph 4(a)(iii) of the Policy the Complainant must establish that the disputed domain name has been either registered or subsequently used in bad faith by the Respondent. Paragraph 4(b) of the Policy then provides the following, non-limiting, list of circumstances which, if present, will be evidence of such registration and use of a domain name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to another person for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of a name, trade mark or service mark from reflecting that name or mark in a corresponding domain name; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business or activities of another person; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's name or mark as to the source, sponsorship, affiliation, or endorsement of that website or location or of a product or service on that website or location; or

(v) if any of your representations or warranties as to eligibility or third party rights given on application or renewal are, or subsequently become, false or misleading in any manner.

Much of the evidence relied upon by the Complainant under paragraph 4(a)(ii) is also relevant to the question of bad faith registration and use of the disputed domain name under paragraph 4(a)(iii). In particular, the circumstances outlined in paragraph 4(b)(ii) and (iv) appear to be present, although the Complainant's submissions focus on para 4(b)(iv). However, the evidence filed shows that the Complainant had marketed MOUNJARO products throughout the world for several years prior to registration of the disputed domain name and had achieved significant market success. It is therefore reasonable to conclude, in the absence of any contradicting evidence from the Respondent that it knew of the Complainant's mark as well as its application for marketing approval from the relevant Australian regulatory authority at the time of applying for registration of the disputed domain name. This suggests that the circumstances referred to in paragraph 4(b)(ii) arise.

Bad faith registration and use within para 4(b)(iv) is also shown when regard is had to the contents of the website to which the disputed domain name resolves. These matters have already been discussed above in relation to paragraph 4(a)(ii), in particular the general false impression arising from the Respondent's website that it is associated directly with the Complainant and is even its official Australian distributor. In the light of this material, the Panel concludes that the circumstances outlined in paragraph 4(b)(iv) appear to exist, namely that the Respondent is intentionally attempting 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 that website or location or of a product or service on that website. The likelihood of such confusion is compounded by the consideration that the MOUNJARO trade mark is a distinctive mark and that the MOUNJARO brand products had received extensive promotion and publicity in the years preceding registration of the disputed domain name.

In view of the evidence, the Panel concludes that the Complainant has made a prima facie case of bad faith registration and use of the disputed domain name falling within the circumstances outlined in paragraph 4(b)(ii) and (iv).

7. Decision

For all 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 <mounjarobuyonline.com.au> be transferred to the Complainant.

/Staniforth Ricketson/

Staniforth Ricketson

Sole Panelist

Date: December 10, 2024