

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Mandy Lee  
Case No. D2023-3330

### **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 Mandy Lee, China.

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

The disputed domain name <lliy.com> 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 August 2, 2023. On August 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 4, 2023, the Registrar transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 29, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 30, 2023.

The Center appointed Gabriel F. Leonardos as the sole panelist in this matter on September 5, 2023. 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, Eli Lilly and Company (“Lilly”) is a pharmaceutical company founded in 1876. The company and several of its products (*i.e.*, Prozac, Cialis, Zyprexa, Humulin, N insulin, and others) and are all well known worldwide.

Complainant operates a primary website using the domain name <lilly.com> in which promotes and offers its goods and services.

Complainant owns a wide portfolio of trademark registrations in the United States and other countries for the mark LILLY. Some examples of Complainant’s trademark registrations can be found below:

Registration No.	Trademark	Jurisdictions	International Class	Registration Date
UK00000759381	LILLY	United Kingdom	5	November 8, 1956
1318867		United States	5	February 12, 1985
982610		China	10	April 14, 1997

The disputed domain name was registered on April 27, 2023, and, according to the evidence submitted by Complainant, was used to send emails impersonating Complainant. The disputed domain name currently resolves to an error webpage without content.

#### 5. Parties’ Contentions

##### A. Complainant

Complainant pleads that the disputed domain name <lliy.com> is almost identical and confusingly similar to Complainant’s registered trademark LILLY. The only difference between the disputed domain name and Complainant’s trademark is the rearrangement of the letter “i” in the disputed domain name, associated with the generic Top-Level Domain (“gTLD”) “.com”, which is not enough to distinguish from Complainant’s trademark, claiming to create a risk of association, fulfilling paragraph 4(a)(i) of the Policy and paragraph 3(b)(viii) and 3(b)(ix)(1) of the Rules.

In addition, Complainant states that Respondent would not have any rights or legitimate interests in respect of the disputed domain name, nor is Respondent commonly known by the disputed domain name. Further, Respondent has not been authorized, or licensed to use Complainant’s trademark LILLY as a domain name nor is Respondent associated with Complainant.

Complainant observes that Respondent does not make a legitimate noncommercial or fair use of the disputed domain name, as it is not used to promote a *bona fide* offering of goods or services, nor to support a legitimate noncommercial or fair use.

This way, Complainant states that no legitimate use of the disputed domain name could be reasonably claimed by Respondent, thus paragraph 4(a)(ii) of the Policy and paragraph 3(b)(ix)(2) of the Rules have been fulfilled.

Finally, Complainant states that Respondent fraudulently used the disputed domain name to impersonate Complainant.

Thus, according to Complainant, the requirements for the identification of a bad faith registration and use of the disputed domain name have been fulfilled, pursuant to paragraph 4(b)(iv) of the Policy.

Accordingly, Complainant requests transfer of the disputed domain name to Complainant.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

To succeed in a UDRP complaint, Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

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

The burden of proving these elements is upon Complainant.

Respondent had 20 days to submit a response in accordance with paragraph 5(a) of the Rules and failed to do so. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the complaint, in the absence of exceptional circumstances, the panel's decision shall be based upon the Complaint.

### **A. Identical or Confusingly Similar**

Complainant has duly proven that it owns prior trademark rights for LILLY, and that the disputed domain name combines a misspelling of Complainant's LILLY mark with a transposition of the letter "i" in the disputed domain name with a generic Top-Level Domain ("gTLD") ".com".

According to the section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the gTLD ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Misspelling a mark in a domain name such as the rearrangement of one letter does not prevent the domain name containing that misspelling being confusingly similar to a complainant's mark. Rearranging the letter "i" after the letters "lll" followed by the letter "y" does not prevent the disputed domain name to be confusingly similar to Complainant's mark LILLY as such typo is merely a rearrangement of the same letters.

This is summarized in section 1.9 of [WIPO Overview 3.0](#) as follows: "[a] domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant."

Thus, the Panel finds that the disputed domain name is confusingly similar to Complainant's trademark LILLY, and so the requirement of the first element of paragraph 4(a) of the Policy is satisfied.

## B. Rights or Legitimate Interests

The consensus view of UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy is summarized in section 2.1 of the [WIPO Overview 3.0](#) as follows: “[w]hile 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

In this case, noting the facts and contentions listed above, the Panel finds that Complainant has made out a *prima facie* case showing that Respondent lacks rights or legitimate interests in the disputed domain name, so the burden of production of evidence shifts to Respondent. The disputed domain name does not resolve to any active websites and as Respondent has not replied to Complainant’s contentions, the Panel has considered Complainant’s un rebutted *prima facie* case to be sufficient to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name.

It should be noted that Respondent’s lack of response (in the broader context of the case), according to the above-mentioned guidelines from [WIPO Overview 3.0](#), section 2.1, suggests that Respondent has no rights or legitimate interests in the disputed domain name that it could put forward.

In addition, the typosquatting nature of the disputed domain name reflects an intent to deceive Internet users expecting to find the Complainant and unaware of the typographical error. Such intent cannot confer rights or legitimate interests upon the Respondent.

Furthermore, Respondent has not used the disputed domain name in the context of a *bona fide* offering of goods and services that could demonstrate rights or legitimate interests, since the evidence in the Complaint shows that the disputed domain name was used to send fraudulent emails impersonating Complainant.

The Panel finds that the use of the disputed domain name for illegal activity (e.g., sending fraudulent email in this case) can never confer rights or legitimate interests on Respondent. [WIPO Overview 3.0](#), section 2.13.1.

Therefore, the Panel finds that the requirement of the second element of paragraph 4(a) of the Policy is also satisfied.

## C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of circumstances that, without limitation, are deemed evidence of registration and use of a domain name in bad faith.

Respondent has registered the disputed domain name that misspells Complainant’s trademark LILLY, through the transposition of the letter “i”. The Panel finds that it was duly demonstrated that Respondent was likely aware of Complainant’s rights to LILLY at the time of the registration, as Complainant’s trademark is widely known and enjoys an international reputation. Moreover, the use of the disputed domain to send fraudulent emails, supports the of Respondent’s prior knowledge of Complainant’s trademark and a clear intent to associate with Complainant.

Further, evidence shows that the disputed domain name resolves to a website without content. Previous UDRP panels have concluded in similar cases that such non-use does not prevent a finding of bad faith use by the passive holding doctrine. See *BPCE v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / pascale kiss, cherhgi*, WIPO Case No. [D2021-1251](#).

As discussed in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), there are five circumstances that indicate if the passive holding of a domain name could be regarded as bad faith:

- “(i) the Complainant’s trademark has a strong reputation and is widely known [...],
- (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,
- (iii) the Respondent has taken active steps to conceal its identity [...],
- (iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and
- (v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate [...].”

Considering all of the items listed above, the Panel finds that at least items (i), (ii) and (v) are present in this case, since (i) Complainant enjoys a well-known reputation for the trademark LILLY; (ii) Respondent has not responded to Complainant’s contentions, failing to provide evidence of the use in good faith of the disputed domain name; and (v) there is no plausible use of the disputed domain name that would not represent bad faith, especially considering that it is composed of Complainant’s trademark LILLY misspelled and Complainant has presented evidence showing the use of the disputed domain name associated with an attempt to impersonate Complainant. Thus, the circumstances of the present case support a finding of bad faith.

Furthermore, misspelling is a form of typosquatting expressly considered to be an indication of bad faith, which is particularly clear when the typo is of a famous trademark, such as LILLY (sections 3.1.4 and 3.2.1 of [WIPO Overview 3.0](#)).

Finally, it should be noted that, in the circumstances, Respondent’s lack of response further reinforces that the disputed domain name most likely was registered and is being used in bad faith. In this sense, the panel found in *Instagram, LLC v. Registration Private, Domains By Proxy, LLC / Alexis Kane*, WIPO Case No. [D2021-0912](#) that:

“The following factors were also considered by the Panel as indicative of bad faith registration and use of the disputed domain name: (i) the Respondent’s lack of response to the Complaint. See, *Awesome Kids LLC and/or Awesome Kids L.L.C. v. Selavy Communications*, WIPO Case No. [D2001-0210](#); (ii) the Respondent’s lack of response to the cease-and-desist letter sent by the Complainant. See, e.g., *Intesa Sanpaolo S.p.A. v. Ekkert Ida*, WIPO Case No. [D2018-2207](#); (iii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name as per paragraph 4(b) of the Policy.”

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Therefore, the requirement of the third element of paragraph 4(a) of the Policy is satisfied.

## 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, <liliy.com> be transferred to the Complainant.

/Gabriel F. Leonardos/

**Gabriel F. Leonardos**

Sole Panelist

Date: September 19, 2023