

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait
Case No. D2023-3670

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 Mounjaro Admin, Mounjaro Kuwait, Kuwait.

2. The Domain Name and Registrar

The disputed domain name <mounjarokw.com> (the “Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 31, 2023. On September 1, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 1, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Contact Privacy Inc. Customer 0167258742) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 4, 2023, 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 September 5, 2023.

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 September 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 11, 2023.

The Center appointed Ian Lowe as the sole panelist in this matter on October 24, 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

The Complainant is an American pharmaceutical company with headquarters in Indiana, United States. Mounjaro is an injectable pharmaceutical product for the treatment of type 2 diabetes that was approved by the United States Food and Drug Administration in May 2022. In the first half of 2023, the Complainant's sales of MOUNJARO brand product amounted to over USD 1.5 billion worldwide. Mounjaro is intended to be available on prescription only and is not approved for use in Kuwait.

The Complainant is the proprietor of registered trademarks in respect of MOUNJARO in 60 countries around the world, including European Union trademark number 018209187 MOUNJARO registered on September 8, 2020, United States trademark number 6,809,369 MOUNJARO registered on August 2, 2022, and Kuwait trademark number KW1627708 MOUNJARO registered on June 21, 2021 (the "Mark").

The Complainant has since May 2022 advertised and provided information regarding its MOUNJARO brand product using its website at "www.mounjaro.com".

The Domain Name was registered on May 12, 2023. It resolves to a website at "www.mounjarokw.com" (the "Respondent's Website"). The home page is headed "Mounjaro Kuwait" and offers for sale a small range of what purport to be Mounjaro and Ozempic products priced in Kuwaiti dinars. Ozempic is also a treatment for type 2 diabetes manufactured by a Danish competitor of the Complainant and intended to be available on prescription only.

There is no indication on the Respondent's Website as to the operator of the website, and no contact details given.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly to its MOUNJARO trademark, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith within the meaning of the Policy.

B. Respondent

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

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

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

A. Identical or Confusingly Similar

The Complainant has uncontested rights in the Mark by virtue of its many trademark registrations. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the Mark together with the letters “kw”, the two-letter country abbreviation for Kuwait. In the Panel’s view, the addition of these letters does not prevent a finding of confusing similarity. Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has made out a strong *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. The Respondent is not authorized by the Complainant to use the Domain Name. The Respondent’s Website offers for sale what purport to be the Complainant’s prescription-only Mounjaro products together with those of a competitor. There is no indication on the website that a prescription is required to purchase the products and sales appear to be directed at the Kuwait market even though the Complainant’s Mounjaro product is not authorised for use in Kuwait.

Although there has been no Response by the Respondent, the Panel has in mind that previous UDRP panels have recognized that resellers using a domain name containing the complainant’s trademark to undertake sales of the complainant’s goods may be making a *bona fide* offering of goods and thus have a legitimate interest in such domain name. The Oki Data¹ test as set out in section 2.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) outlines the following cumulative requirements for such a finding:

- (i) the respondent must actually be offering the goods at issue;
- (ii) the respondent must use the site only to sell the trademarked goods;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark.

So far as the first requirement is concerned, the Respondent’s Website offers what purport to be the Complainant’s goods, but since the Complainant’s Mounjaro products are not authorised for sale in Kuwait, they are either grey market products or counterfeit. So far as the second requirement is concerned, the Respondent’s Website also offers for sale what purport to be the products of a competitor. Turning to the third requirement, the Respondent’s Website gives no information whatsoever as to the identity of the operator of the Website or seller of the products on offer and fails to make clear in an accurate and prominent way, or at all, the Respondent’s relationship (or absence of relationship) with the Complainant. The third requirement is also not therefore met.

Accordingly, the Panel does not consider that the Respondent has met the Oki Data test and finds that there is a *prima facie* case that the Respondent does not have any rights or legitimate interests in respect of the Domain Name. Furthermore, the construction of the Domain Name itself is such as to carry a risk of implied affiliation and thus cannot constitute fair use.

The Panel is in no doubt that the Respondent has registered and used the Domain Name with a view to confusing Internet users into believing that the Respondent’s Website was operated by or authorized by the Complainant.

The Respondent has chosen not to respond to the Complaint or to take any steps to counter the *prima facie* case shown by the evidence available to the Panel. In the circumstances, the Panel finds that the Complainant has established that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

¹ *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

C. Registered and Used in Bad Faith

In light of the use of the Complainant's Mark and the nature of the Respondent's Website, the Panel is in no doubt that the Respondent had the Complainant and its rights in the Mark in mind when it registered the Domain Name. The Panel considers that the Respondent has registered and used the Domain Name to deceive Internet users into believing that the Domain Name is operated or authorized by the Complainant, and to attract Internet users by creating a likelihood of confusion with the Mark, clearly for commercial gain. The Panel considers that this amounts to paradigm bad faith registration and use.

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 Domain Name <mounjarokw.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: November 7, 2023