

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. sahil budhani, Laalishq
Case No. D2023-4568

1. The Parties

The Complainant is Eli Lilly and Company, United States of America ("US" or "United States"), represented by Faegre Drinker Biddle & Reath, United States.

The Respondent is sahil budhani, Laalishq, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <mounjarodiabetespharmacy.org> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 2, 2023. On November 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 3, 2023, 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 (Privacy service provided by Withheld) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 9, 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 November 9, 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 November 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 5, 2023. The Respondent sent email communications to the Center on November 17, 2023, and December 6, 2023. The Parties failed to execute a Settlement Agreement and therefore, the Center sent the Commencement of Panel Appointment Process on December 7, 2023.

The Center appointed Andrea Mondini as the sole panelist in this matter on December 13, 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 a major pharmaceutical company headquartered in Indiana, United States.

The Complainant's product portfolio includes an injectable, prescription-only medicine for the treatment of type 2 diabetes, marketed under the trademark MOUNJARO.

The Complainant holds the domain name <munjaro.com> which hosts the main website related to this product. The Complainant owns numerous trademark registrations in several jurisdictions, including:

TRADEMARK	JURISDICTION	REGISTRATION NUMBER	REGISTRATION DATE	INTERNATIONAL CLASS
MOUNJARO	United States	6,809,369	August 2, 2022	5
MOUNJARO	European Union	018209187	September 8, 2010	5
MOUNJARO	India	5328244	February 14, 2022	5

Because the Respondent did not file a Response, nothing is known about the Respondent.

The disputed domain name was registered on October 12, 2023.

According to the evidence submitted with the Complaint, the disputed domain name resolves to a website that sells pharmaceutical products under the trademark MOUNJARO without a prescription, thereby using the Complainant's logos and images and without disclosing Respondent's lack of a relationship with the Complainant.

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 as follows:

The United States Food and Drug Administration announced its approval of the Complainant's MOUNJARO product for use in connection with injectable pharmaceutical products for the treatment of type 2 diabetes on May 13, 2022. The Complainant launched the product in June of 2022, and by the end that year, the product produced nearly USD280 Million in revenue worldwide. The sales of MOUNJARO brand product continued to increase throughout 2023, with the Complainant's second-quarter report announcing worldwide revenue of over USD1.5 billion during the first half of 2023.

The Complainant's MOUNJARO trademark is an invented word that is distinctive and widely recognized to designate the Complainant's pharmaceutical product.

The disputed domain name is confusingly similar to the MOUNJARO trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the terms “diabetes” and “pharmacy” is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The trademark MOUNJARO has been extensively used to identify the Complainant and its products. The Respondent has not been authorized by the Complainant to use this trademark, is not commonly known by the disputed domain name, and there is no evidence of the Respondent’s use, or demonstrable preparation to use, the disputed domain name in connection with a *bona fide* offering of goods and services. Instead, the Respondent has registered the disputed domain name with a privacy-shielding service and has used the disputed domain name to direct Internet traffic to a web site that sells either counterfeit or gray market versions of the Complainant’s MOUNJARO brand product without a prescription, all while using Complainant’s copyright-protected images and without disclosing Respondent’s lack of a relationship with Complainant.

Such use is not justified under the “Ok! Data” principle, in particular because the Respondent fails to accurately disclose its relationship with the Complainant. Moreover, the website associated with the disputed domain name purports to offer the MOUNJARO for sale with “World Wide delivery”, although this product has only been approved for sale in a limited number of jurisdictions. The marketing of the MOUNJARO product in jurisdictions where it is not legally available is evidence that the Respondent lacks rights or legitimate interests in the disputed domain name. Similarly, the website associated with the disputed domain name expressly states that no prescription is required to purchase MOUNJARO brand products, which is only available with a physician’s prescription. A prior panel has specifically noted that offering Complainant’s MOUNJARO brand product without a prescription cannot support a legitimate right or interest in a domain name.

The disputed domain name was registered in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well known trademark MOUNJARO at the time it registered the disputed domain name.

The Respondent is using the disputed domain name in bad faith, to drive Internet traffic to its website, where it is using the disputed domain name to profit from the sale of counterfeit or grey market products, all while concealing its identity. Further, Respondent is using the disputed domain name to offer prescription-only products without a prescription, thereby potentially harming the health of unsuspecting consumers, which further supports a finding of bad faith. Moreover, the content of the website associated with the disputed domain name, in particular the use of the Complainant’s trademarks, logos and copyright-protected marketing images, misleads users into believing that there is an association between Complainant and the website, which in fact does not exist.

B. Respondent

The Respondent did not submit a formal response. On November 17, 2023, the Respondent sent an email communication to the Center stating: *“I’m ready for settlement of this dispute, let’s open the talk with complainant. I’m open for the discussion anytime”* and a further email asking *“who to contact for this?”* After having received the Center’s notification of November 28, 2023 that the proceedings will continue because no settlement had been reached, and after the due date for Response had lapsed, the Respondent sent an email communication to the Center on December 6, 2023, stating *“send me agreement”*. However, the record indicates that no agreement was reached between the parties.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the complainant has rights;
- (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 and is being used in bad faith.

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.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name.

Although the addition of other terms such as here "diabetes" and "pharmacy" may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

Based on the available record, 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 Complainant has shown that the Respondent posted a website under the disputed domain name purporting to offer the Complainant's products. Even if the products sold by the Respondent were genuine, such use of these disputed domain name does not meet the "Okidata Test", because these sites do not disclose the lack of relationship between the Respondent and the Complainant. [WIPO Overview 3.0](#), section 2.8.

The offering for sale of prescription-only drugs falsely stating that no prescription is required, and with "World Wide delivery", although the product has only been approved for sale in a limited number of jurisdictions is illegal and may put the safety of patients at risk. Panels have held that the use of a domain name for illegal activity such as here can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Based on the available record, 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the view of the Panel, noting that that the Complainant's trademark predates the registration of the disputed domain name and considering that the disputed domain name resolves to websites featuring the Complainant's logo and depictions of its products, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name resolves to a website that sells pharmaceutical products under the trademark MOUNJARO and thereby using the Complainant's logos and copyright-protected images and without disclosing Respondent's lack of a relationship with the Complainant. The impression given by this website would cause consumers to believe that the Respondent is somehow associated with Complainant when, in fact, it is not. The Panel holds that by using the disputed domain name, Respondent has intentionally attempted 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 its web site in the sense of Policy, paragraph 4(b)(iv).

Moreover, Panels have held that the use of a domain name for illegal activity such as in the present case selling prescription drugs without requiring a prescription and/or selling to countries where the pharmaceutical product does not have a marketing authorization constitutes use in bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds that the Complainant has established the third element of the Policy with regard to the disputed domain name.

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 <mounjarodiabetespharmacy.org> be transferred to the Complainant.

/Andrea Mondini/

Andrea Mondini

Sole Panelist

Date: December 22, 2023