

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Aleksandr vasilev
Case No. DIO2024-0025

1. The Parties

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

The Respondent is Aleksandr vasilev, Germany.

2. The Domain Name and Registrar

The disputed domain name <ozempic-mounjaro.io> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 13, 2024. On August 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 15, 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 (Redacted for Privacy, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 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 August 19, 2024.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the “Policy”), the Rules for .IO Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .IO 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 August 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 10, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on September 16, 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 the registered owner of many trademarks world wide for MOUNJARO, e.g. US Registration No. 6,809,369, MOUNJARO registered on August 2, 2022 (filing date November 5, 2019) in association with pharmaceutical preparations for the treatment of diabetes.

It results from the Complainant's undisputed allegations that the United States Food and Drug Administration announced its approval of the MOUNJARO brand 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 2022, the product produced nearly USD 280 million in revenue worldwide. Sales of MOUNJARO brand product continued to increase throughout 2023 and 2024.

The Complainant uses the domain name <mounjaro.com> (registered on October 21, 2019) in order to advertise and provide information regarding its MOUNJARO brand product.

The disputed domain name <ozempic-mounjaro.io> was registered on November 24, 2023. Furthermore, the evidence provided by the Complainant shows that the disputed domain name resolved to a website purportedly offering MOUNJARO products in the Russian Federation, as well as competing products. By the time of this decision, the disputed domain name resolved to an inactive website.

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 that the disputed domain name is confusingly similar to the Complainant's trademark since it contains its highly distinctive trademark MOUNJARO, which is an invented word, entirely. The use of "ozempic" in the disputed domain name is a reference to the third-party OZEMPIC brand diabetic medication, which is directly competitive with the Complainant and its MOUNJARO brand product.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, it has not given the Respondent permission, authorization, consent or license to use its mark. In addition, the Respondent has registered the disputed domain name utilizing a privacy shielding service to direct Internet traffic to a website that sells gray market or potentially counterfeit versions of the Complainant's MOUNJARO brand product in the Russian Federation, where the product has not been legally approved for distribution, and therefore without a valid prescription (as a prescription cannot be legally obtained in jurisdictions where the product has not been authorized for distribution). These gray market (or otherwise counterfeit) products are sold alongside competing prescription medications. The Respondent carries out these activities without disclosing the Respondent's lack of a relationship with the Complainant. MOUNJARO brand products have not been approved for sale in Russian Federation in any format, the Respondent is purporting to sell MOUNJARO brand products where prescriptions are not legally available and product cannot be legally purchased.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the Respondent is using the Complainant's mark to drive Internet traffic

to its website under the disputed domain name in order to profit from the sale of gray market or otherwise counterfeit products, and from the sale of “competing products”, all while concealing its identity. Moreover, the content of the website associated with the disputed domain name, in particular the use of the Complainant’s trademarks and purported sale of the Complainant’s own products (albeit in jurisdictions where they are not approved for sale and without the availability of legitimate prescriptions), misleads users into believing that there is an association between the Complainant and the website, and serves as evidence of an intentional attempt to attract Internet users to the disputed domain name for commercial gain in bad faith by creating a likelihood of confusion with the MOUNJARO mark. In addition, the Respondent has not only acted in bad faith but has engaged in a pattern of such conduct. Specifically, the Respondent has been the subject of two previous domain name dispute proceedings brought by the Complainant regarding the use of its MOUNJARO mark, both resulting in transfers. See *Eli Lilly and Company v. Aleksandr vasilev*, WIPO Case No. [D2024-0646](#), transferring the domain name <ozempic-mounjaro.com>; *Eli Lilly and Company v. Aleksandr vasilev*, WIPO Case No. [D2024-0375](#), transferring the domain name <mounjaro.icu>.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered or is being used in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 1.7.¹

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark 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. 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 the other term here, “ozempic”, 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

¹ Given the similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy (the “UDRP”), the Panel will refer to cases decided under both the Policy and the UDRP, and notably the [WIPO Overview 3.0](#), if relevant to this proceeding.

the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8, see also *Eli Lilly and Company v. Aleksandr vasilev*, WIPO Case No. [D2024-0646](#).

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 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.

It results from the undisputed evidence before the Complainant never granted any kind of authorization to the Respondent to register and/or to use its trademark MOUNJARO in any manner, including as a domain name; and that there is no evidence that can possibly suggest that Respondent has become commonly known by the disputed domain name. The Panel also finds that the disputed domain name has been used in connection to a website that purportedly sells gray market or most likely counterfeit versions of the Complainant’s MOUNJARO brand product, as well as competing products of third parties, in the Russian Federation, where the product has not been legally approved for distribution, and therefore without a valid prescription, an activity which is far from being a bone fide offering as set out in paragraph 4(c)(i) of the Policy and/or to constitute a legitimate noncommercial or fair use of the disputed domain name as set out in paragraph 4(c)(iii) of the Policy. Additionally, having reviewed the Respondent’s website, the Panel finds that it does not fulfil the *Ok! Data* Test requirements. See *Eli Lilly and Company v. Aleksandr vasilev*, WIPO Case No. [D2024-0646](#) and [WIPO Overview 3.0](#), section 2.8.

Panels have held that the use of a domain name for illegal activity here, the claimed sale of counterfeit goods or illegal pharmaceuticals, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered or 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.

Panels have held that the use of a domain name for illegal activity (here, the claimed sale of counterfeit goods or illegal pharmaceuticals, or other types of fraud) constitutes 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.

As explained above, it results from the undisputed evidence submitted by the Complainant that the disputed domain name in connection to a website that purportedly sells gray market or most likely counterfeit versions of the Complainant's MOUNJARO brand product, as well as competing products of third parties, in the Russian Federation, where the product has not been legally approved for distribution, and therefore without a valid prescription.

Finally, the Respondent has been involved in a number of trademark-abusive domain name registrations (see *Eli Lilly and Company v. Aleksandr vasilev*, WIPO Case No. [D2024-0646](#); *Eli Lilly and Company v. Aleksandr vasilev*, WIPO Case No. [D2024-0375](#)). In the view of the Panel, this behavior demonstrates a pattern of conduct by the Respondent of taking advantage of trademarks of third parties without any right to do so and is indicative of the Respondent's bad faith. Previous panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration, see [WIPO Overview 3.0](#), section 3.1.2. The Panel considers that this is the case here.

Based on the available record, the Panel finds that 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 <ozempic-mounjaro.io> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: September 30, 2024