

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Ilgam Nurtdinov

Case No. D2023-4574

1. The Parties

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

The Respondent is Ilgam Nurtdinov, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <cialis.science> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 3, 2023. On November 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 7, 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 (Whois Privacy Protection Foundation) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 16, 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 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 20, 2023.

The Center appointed Adam Taylor as the sole panelist in this matter on January 4, 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 and its predecessors have supplied pharmaceutical products under the mark CIALIS since around 2001.

The Complainant's group owns many trade marks for CIALIS worldwide including United States Trademark No. 2,724,589 registered on June 10, 2003, in classes 6, 18, 44, 46, 51, and 52. This mark is owned by Lilly ICOS, LLC.

The Complainant operates a website at "www.cialis.com".

The disputed domain name was registered on August 30, 2023.

As of September 29, 2023, the disputed domain name resolved to a website branded "PharmacyMall", which purports to offer the Complainant's products for sale, as well as those of the Complainant's competitors.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

Notably, the Complainant contends that:

- the CIALIS-branded products listed on the Respondent's website are counterfeit on the basis that they are being offered in greater dosages than those of the Complainant's legitimate products and that the Respondent's site deploys branding that the Complainant does not itself use (e.g., "CIALIS Professional"); and
- the Respondent's products are also unlawful because they are being offered for sale without a prescription whereas the Complainant's products are only available on prescription.

B. Respondent

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

6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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 trade mark 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 trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. While the company that owns the registered trade mark cited in section 4 above is apparently a different entity to the Complainant, it is clearly part of the same corporate group. In these circumstances, and in the absence of any objection from the Respondent, which has not appeared in the proceeding, the Panel finds it reasonable to infer that the Complainant has rights in the trade mark for the purpose of standing to file the Complaint. [WIPO Overview 3.0](#), section 1.4.1.

The Panel finds the mark is recognisable within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 recognised 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.

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

Moreover, the Panel also notes that the website at the disputed domain name also offered products of the Complainant's competitors.

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

C. Registered and Used 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, claimed sale of counterfeit and/or illegal pharmaceuticals) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. The Panel notes that the Respondent has not appeared in this proceeding to contest the Complainant's assertions regarding counterfeiting and illegality. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Finally, as previously noted the website at the disputed domain name also offered products of the Complainant's competitors.

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

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 <cialis.science> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: January 18, 2024