

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. less boss
Case No. D2024-0643

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 less boss, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <mounjaroinjection.com> is registered with eNom, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 12, 2024. On February 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 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 February 14, 2024.

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 February 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 12, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 18, 2024.

The Center appointed Peter Burgstaller as the sole panelist in this matter on March 21, 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 a pharmaceutical company headquartered and organized under the laws of the State of Indiana, United States. Its products include an injectable, prescription-only medicine, distributed under the brand MOUNJARO, which are used in the treatment of type 2 diabetes.

The Complainant owns numerous trademark registrations containing the mark MOUNJARO, inter alia:

- United States trademark (word), Registration No 6,809,369, registered on August 2, 2022, in international class 5;
- United States trademark (word), Registration No 7,068,463, registered on May 30, 2023, in international class 44;
- United Kingdom trademark (word), Registration No UK00003608193, registered July 16, 2021, in international class 5; and
- European Union trademark (word), Registration No 18209187, registered September 10, 2020, in international class 5 (Annex 7 to the Complaint).

Further, the Complainant has registered the domain name <mounjaro.com> on October 21, 2019 (Annex 8 to the Complaint) and provides under this domain name its major business website with information about the Complainant and its business (Annex 9 to the Complaint).

The disputed domain name was registered on November 4, 2023 (Annex 1 to the Complaint). At the time of filing the Complaint, the disputed domain name resolved to a website where MOUNJARO branded products were offered together with the Complainant's logo and product images, claiming to be a "Mounjaro certified supplier", and failing to disclose that the products are prescription-only medicine and the Respondent's lack of a relationship with the Complainant (Annex 11 to the Complaint).

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 it owns trademark rights around the world in the MOUNJARO mark that predate the registration of the disputed domain name. The Complainant puts forth that its MOUNJARO trademark is a phantasy word which is not only distinctive but widely recognized. It states that the disputed domain name consists of the distinctive MOUNJARO mark together with the term "injection" and the generic Top-Level Domain ("gTLD") ".com", which, however, must be disregarded.

The Complainant argues that the addition of the term "injection" does not prevent a finding of confusing similarity. The fact that the disputed domain name incorporates the distinctive MOUNJARO mark in its entirety renders it confusingly similar with the MOUNJARO trademark, in which the Complainant owns rights.

Further, the Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, there is no evidence that the Respondent is commonly known by the disputed domain name. It is not using the disputed domain name in connection with a bona fide offering of goods nor making a legitimate noncommercial or fair use of it. Rather, the Respondent has used

a privacy shield to hide its identity and direct Internet traffic to a website that sells gray market or potentially counterfeit versions of the Complainant's MOUNJARO branded product without a prescription in jurisdictions where the product is not legally available. The Respondent carries on these activities while attempting to impersonate the Complainant by prominently displaying the Complainant's MOUNJARO mark and logo in the header and footer of its website, using the Complainant's copyright-protected images, claiming to be a "Mounjaro certified supplier", and failing to disclose the Respondent's lack of a relationship with the Complainant.

The Complainant has not consented to such use of the trademark, and its consent is not obsolete either given that the requirements as outlined in *Oki Data Americas v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), are not met in the present case.

Lastly, the Respondent had constructive notice of the Complainant's MOUNJARO trademark due to its multiple registrations throughout the world. There is no plausible reason for the Respondent to register the disputed domain name other than to capitalize on the Complainant's goodwill in the trademark.

On the third element, the Complainant contends that the disputed domain name is registered and being used in bad faith. The MOUNJARO trademark is widely recognized. Thus, there can be no doubt that the Respondent registered the disputed domain name with knowledge of the Complainant's rights, particularly as the Respondent purports to sell the Complainant's products. This itself is indicative of bad faith.

Due to the "blockbuster" success of the MOUNJARO product and the repute of the trademark, the website, to which the disputed domain name resolves, misleads users into thinking there is a relationship between the Respondent and the Complainant.

Hence, the Respondent has opportunistically registered and used the disputed domain name for commercial gain, which is all the more to be disapproved due to the potentially harmful effect of the product on unsuspecting consumers' health.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (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 with respect to 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 the mark MOUNJARO for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

In the present case, the disputed domain name is confusingly similar to the MOUNJARO mark in which the Complainant has rights since it incorporates the entirety of the mark MOUNJARO and only adds the term “injection” at the end.

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms does not prevent a finding of confusing similarity under the first element of the Policy ([WIPO Overview 3.0](#), section 1.8). This is the case at present.

Finally, it has also long been held that gTLDs (in this case “.com”) are generally disregarded when evaluating the confusing similarity of a disputed domain name. [WIPO Overview 3.0](#), section 1.11.1.

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

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 disputed domain name.

The Respondent is not authorized by the Complainant to use the disputed domain name. The Respondent’s website offers for sale what purport to be the Complainant’s prescription-only Mounjaro products and there is no indication on the website that a prescription is required to purchase the products.

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 under the Oki Data test as set out in [WIPO Overview 3.0](#), section 2.8. However, the Oki Data test outlines cumulative requirements for such a finding which are not met in the present case. For example, the site must accurately and prominently disclose the registrant’s relationship with the trademark holder. 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.

Further, there is no indication on the Respondent’s website which discloses that the Mounjaro products are prescription-only products and that a prescription is required to purchase the products.

Finally, the construction of the disputed 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 disputed 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.

Therefore, the Panel finds the second element of the Policy has been established.

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 MOUNJARO in mind when it registered the disputed domain name.

The Panel considers that the Respondent has registered and used the disputed domain name to deceive Internet users into believing that the disputed domain name is operated or authorized by the Complainant, and to attract Internet users by creating a likelihood of confusion with the MOUNJARO mark, clearly for commercial gain. The Panel considers that this amounts to paradigm bad faith registration and use.

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 <mounjaroinjection.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: March 28, 2024