

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Aleksandr vasilev  
Case No. D2024-0646

### **1. The Parties**

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

The Respondent is Aleksandr vasilev, Germany.

### **2. The Domain Name and Registrar**

The disputed domain name <ozempic-mounjaro.com> 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 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 disclosing the registrant and contact information for the disputed domain name which differed from the named Respondent (Domain Admin) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 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 February 15, 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 23, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 15, 2024.

The Center appointed María Alejandra López 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 recognized pharmaceutical company based in the State of Indiana, United States of America.

The Complainant owns an injectable pharmaceutical product, prescription-only medicine, trademarked under the name of MOUNJARO, for the treatment of type 2 diabetes, approved by the United States Food and Drug Administration (FDA).

The Complainant launched the product in June 2022 and by the end of 2023 MOUNJARO obtained a revenue on sales of more than USD five billion.

MOUNJARO has been approved by the FDA for distribution in Australia, Canada, Germany, Japan, Kuwait, Poland, Saudi Arabia, Switzerland, the United Arab Emirates, and United Kingdom.

The Complainant owns multiple Trademark Registrations for MOUNJARO, across the world, including the following:

- European Union Intellectual Property Office (EUIPO) Trademark, for MOUNJARO (word mark), Reg. No. 018209187, in International Class (IC) 5, registered on September 8, 2020, and in force until March 11, 2030.
- United States Trademark for MOUNJARO (word mark), Reg. No. 6,809,369, in IC 5, registered on August 2, 2022, and in force until February 2, 2029.
- United States Trademark for MOUNJARO (word mark), Reg. No. 7,068,463, in IC 44, registered on May 30, 2023, and in force until November 30, 2029.

The Complainant also owns the domain name: <mounjaro.com> registered on October 21, 2019, used to advertise and provide information about MOUNJARO.

The disputed domain name was registered on November 25, 2023. The Complainant has provided evidence where the disputed domain name resolved to a website for potential counterfeit activity of MOUNJARO's 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 Trademark MOUNJARO is distinctive and widely recognized to designate the Complainant's pharmaceutical product, and that such category has been confirmed by previous panels. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#) and *Eli Lilly and Company v. Janni Louche*, WIPO Case No. [D2023-3787](#).

The Complainant contends that the disputed domain name is confusingly similar to its Trademark MOUNJARO; that the fact that the disputed domain name is composed by two trademarks, being OZEMPIC, a third-party brand for diabetic medication produced by the Danish company Novo Nordisk A/S, which is a Complainant's competitor and the Complainant's Trademark MOUNJARO, does not avoid a finding of confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, given that Respondent is neither using the disputed domain name in connection with a bona fide offering of goods and services nor making a legitimate noncommercial or fair use of the disputed domain name; that instead, 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 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; that Respondent's use does not comply with the *Ok! Data* Test criterion.

The Complainant contends that the disputed domain name was registered and is being used in bad faith, given that the Respondent is purporting to sell Complainant's own MOUNJARO's products without any kind of authorization, in a jurisdiction where the Complainant's product hasn't legally been approved for distribution and prescriptions.

## **B. Respondent**

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

## **6. Discussion and Findings**

In accordance with paragraph 4(a) of the Policy, the Complainant must satisfy each of the three following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 and is being used in bad faith.

No Response or any kind of communication has been submitted by the Respondent, despite the fair opportunity given by the Center to present its case in accordance with paragraph 2(a) of the Rules. Therefore, this Panel shall decide this dispute based on paragraph 15(a) of the Rules and will analyze the evidence submitted by the Complainant on the "balance of probabilities" or "preponderance of the evidence" standard. See, paragraphs 14 and 15(a) of the Rules, and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.2.

### **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 evidence, the Panel finds that the Complainant has shown rights in respect of the Trademark MOUNJARO for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Complainant's Trademark MOUNJARO for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term here, a third-party trademark named 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 the disputed domain name and the MOUNJARO Trademark for the purposes of the Policy. See *International Business Machines Corporation v. Leslie Rubin*, WIPO Case No. [D2021-3766](#); *Eli Lilly and Company v. Nancy Toney*, WIPO Case No. [D2024-0115](#) and [WIPO Overview 3.0](#), section 1.8.

In relation to the generic Top-Level Domain “.com”, it is well established that such element may typically be disregarded when it is used as a technical requirement of a domain name. [WIPO Overview 3.0](#), section 1.11.1.

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.

The Panel finds that 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; 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 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 *Oki Data* Test requirements. See *Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait*, WIPO Case No. [D2023-3670](#) and [WIPO Overview 3.0](#), section 2.8.

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

The Panel finds the second element of the Policy has been established.

### C. Registered and Used in Bad Faith

Given the nature of the disputed domain name as such and its use, the Panel finds that Respondent was fully aware of Complainant's existence and the MOUNJARO Trademark value at the time of the registration of the disputed domain name, and used it to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's Trademark MOUNJARO as to the source, sponsorship, affiliation, or endorsement as set out in paragraph 4(b)(iv) of the Policy (see, e.g.: *Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait*, WIPO Case No. [D2023-3670](#); *Eli Lilly and Company v. Janni Louche*, WIPO Case No. [D2023-3787](#); *Eli Lilly and Company v. Nancy Toney*, WIPO Case No. [D2024-0115](#); *Eli Lilly and Company v. Aleksandr vasilev*, WIPO Case No. [D2024-0375](#); and [WIPO Overview 3.0](#), section 3.1.4).

Accordingly, panels have held that the use of a domain name for illegal activity here, claimed as sale of counterfeit goods or illegal pharmaceuticals, potential phishing, malware distribution, unauthorized account access/hacking, or other types of fraud, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Furthermore, given the Complainant's allegations and the existence of *Eli Lilly and Company v. Aleksandr vasilev*, WIPO Case No. [D2024-0375](#), this Panel finds that Respondent has incurred in a pattern of abusive domain name registration as well, as set out in paragraph 4(b)(iv) of the Policy. See [WIPO Overview 3.0](#), section 3.1.2.

Finally, the fact that by the time of this Decision, the disputed domain name points to an inactive website, does not prevent a finding of bad faith, in accordance to the passive holding doctrine. [WIPO Overview 3.0](#), section 3.3. Moreover, such change in use reflects the fact that the Respondent more likely than not had no good faith explanation for its registration and use of the disputed domain name and also reinforces the Panel's finding that the alleged offering of pharmaceuticals through the disputed domain name was fraudulent.

Therefore, based on the provided evidence and the facts of this case, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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.com> be transferred to the Complainant.

/María Alejandra López/

**María Alejandra López**

Sole Panelist

Date: April 4, 2024