

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Amos Njoke
Case No. D2024-3291

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 Amos Njoke, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <mounjaroweightloss.shop> 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 12, 2024. On August 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 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 (N/A) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 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 August 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 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 Benoit Van Asbroeck 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 an American pharmaceutical company founded in 1876. The Complainant owns numerous trademarks in the MOUNJARO mark, amongst which:

European Union Trademark No. 018209187 for MOUNJARO, registered on September 8, 2020, in International Class 5;

United States Trademark No. 6809369 for MOUNJARO, registered on August 2, 2022, in International Class 5; and

Kenya Trademark No. 122476 for MOUNJARO, registered on May 18, 2022, in International Class 5.

The Complainant also owns the <mounjaro.com> domain name since October 21, 2019, which it uses since May 17, 2022, to advertise and provide information regarding its MOUNJARO brand product.

The Respondent appears to be an individual located in Cameroon. The disputed domain name was registered on January 13, 2024, well after the Complainant secured rights in the MOUNJARO mark. According to evidence submitted by the Complainant, the disputed domain name previously resolved to a website that offered the Complainant's MOUNJARO brand product without an apparent need for a prescription and in jurisdictions in which the product has not been legally approved for distribution, while also offering competing products. The provided screenshots of the Respondent's website do not contain a disclaimer clarifying the lack of relationship between the Respondent and the Complainant. At the time of this decision, the disputed domain name resolves to an inactive page.

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, regarding the first element of the Policy, the Complainant contends that they have rights in the mark MOUNJARO and that the disputed domain name is confusingly similar to this mark. The Complainant points out that the disputed domain name incorporates the MOUNJARO mark in its entirety and only differs by the addition of the term "weightloss", which does not affect the confusing similarity. Finally, the Complainant notes that the generic Top-Level Domain ("gTLD") ".shop", can be ignored for the purposes of comparison of the disputed domain name to the Complainant's mark.

Regarding the second element of the Policy, the Complainant contends that the Respondent lacks a right or legitimate interest in the disputed domain name. The Complainant claims to have found no evidence that the Respondent has been commonly known by the disputed domain name. Furthermore, the Complainant contends that the Respondent is not 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. Instead, the Complainant points out that the Respondent has used the disputed domain name to direct Internet traffic to a website that offers the Complainant's MOUNJARO brand product without an apparent need for a prescription and in jurisdictions in which the product has not been legally approved for distribution, while also offering competing products.

The Respondent notes that the Respondent's web shop fails to meet the Oki Data test since: (i) the Respondent is not actually offering MONJARO brand products since they are offered for sale in jurisdictions where this product is not authorized for sale and it therefore appears to offer gray market or even counterfeit goods; (ii) the Respondent also offers for sale competing third-party products, which are marketed and directly compete against the Complainant's MOUNJARO brand product; and (iii) the Respondent fails to accurately disclose its relationship (or lack thereof) with the Complainant as well as any identifying information, such as a business name or a specific physical address. Furthermore, the Respondent had constructive notice of the MOUNJARO mark due to the Complainant's multiple trademark registrations throughout the world. Finally, the Complainant notes that the Respondent is not a licensee of the Complainant and has not received any permission or consent from the Complainant to use their MOUNJARO mark.

With respect to the third element of the Policy, the Complainant contends that the Respondent has registered and used the disputed domain name in bad faith for the following reasons. The Complainant claims that the MOUNJARO trademarks are widely recognized, and that the Respondent registered the disputed domain name with knowledge of these trademarks, particularly considering that the Respondent is purporting to sell the Complainant's products. According to the Complainant, the Respondent is using the Complainant's MOUNJARO 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, as well as competing products, while concealing its identity. The Complainant points out that this is evidence of bad faith registration and use according to paragraph 4(b)(iv) of the Policy.

Furthermore, the Complainant claims that the use of the disputed domain name to offer prescription-only products without any apparent requirement for a prescription or in jurisdictions where prescriptions are otherwise not yet available further supports a finding of bad faith. Moreover, the Complainant contends that the registration of the disputed domain name, which is confusingly similar to the MOUNJARO mark, is another indicator of bad faith. In addition, the Complainant notes that the Respondent's use of the MOUNJARO mark in the disputed domain name is potentially harmful to the health of many unsuspecting consumers who may purchase products advertised through the Respondent's website under the mistaken impression that they are dealing with the Complainant or an authorized distributor of the Complainant and, therefore, will be receiving safe and effective drugs approved by health authorities around the world. Finally, the Complainant points to the fact that the Respondent's registrant address does not exist as an address in Cameroon and that online searches do not show anything that ties this address to an "Amos Njoke". The Complainant therefore believes that the Respondent has provided false or misleading Whois contact information, which is another indicator of bad faith.

B. Respondent

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

6. Discussion and Findings

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.

The Complainant has shown rights in respect of the MOUNJARO trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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 other terms, here “weightloss”, 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 mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Finally, as for the applicable generic Top-Level Domain (“gTLD”), i.e., the suffix “.shop”, the Panel holds that this can be disregarded under the first element confusing similarity test. [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 Respondent does not use the disputed domain name in connection with a bona fide offering of services and has not made a legitimate noncommercial or fair use of the disputed domain name.

The evidence submitted by the Complainant shows that the disputed domain name previously resolved to a website that offered the Complainant’s MOUNJARO brand product without an apparent need for a prescription and in jurisdictions in which the product has not been legally approved for distribution, while also offering competing products. The evidence also shows that the Respondent failed to accurately disclose on that website its relationship (or lack thereof) with the Complainant as well as any identifying information, such as a business name or a specific physical address. This kind of use of the disputed domain name does not represent a bona fide offering and does not support rights or legitimate interests in the disputed domain name. Moreover, Panels have held that the use of a domain name for illegal activity, here the sale of illegal pharmaceuticals, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The disputed domain name currently resolves to an error page. This kind of use of the disputed domain name does neither represent a bona fide offering and does not support rights or legitimate interests in the disputed domain name.

In addition, the Complainant confirmed that the Respondent is not affiliated with the Complainant in any way nor has the Complainant licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainant’s trademarks. The Panel has taken note of the Complainant’s confirmation in this regard and has not seen any evidence that would suggest the contrary. In the absence of any license or permission from the Complainant to use its trademarks, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed (see, e.g., *Sportswear Company S.P.A. v.*

Tang Hong, WIPO Case No. [D2014-1875](#); and *LEGO Juris A/S v. DomainPark Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master*, WIPO Case No. [D2010-0138](#)).

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.

In the present case, the Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's MOUNJARO mark (paragraph 4(b)(iv) of the Policy). As the Panel found above under the first element, the disputed domain name is confusingly similar to the MOUNJARO mark. In addition, as also discussed under the second element above, the Respondent previously used the disputed domain name for a website on which it offered the Complainant's MOUNJARO brand product without an apparent need for a prescription and in jurisdictions in which the product has not been legally approved for distribution, while also offering competing products and without a disclaimer clarifying the lack of relationship between the Respondent and the Complainant. These circumstances, in combination with the Respondent's clear absence of rights or legitimate interests in the disputed domain name, are strong indicators of bad faith.

The fact that the disputed domain name no longer resolves to this website and is no longer being used would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's MOUNJARO trademark and the composition of the disputed domain name and finds that in the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Moreover, 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. The following other circumstances further support a finding of bad faith.

The Panel believes that the Respondent knew or, at least, should have known at the time of registration that the disputed domain name included the Complainant's MOUNJARO trademark. As demonstrated by the Complainant, its MOUNJARO trademarks were registered many years before the registration of the disputed domain name in several countries and used widely. Moreover, as detailed under the second element above, the disputed domain name resolved to a website purportedly offering the Complainant's MOUNJARO brand products. This indicates that the Respondent had the Complainant's trademarks in mind when registering the disputed domain name. The Respondent's knowledge of the Complainant and the MOUNJARO trademarks and therefore its registration in bad faith of the disputed domain name may accordingly also be inferred from these circumstances. [WIPO Overview 3.0](#), section 3.2.2.

Finally, the Whois details provided show that the Respondent used a privacy service. In addition, as demonstrated by the Complainant, the Respondent also provided false address details. These facts can be used as further indicators of bad faith. [WIPO Overview 3.0](#), section 3.6.

Having reviewed the record, 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 <mounjaroweightloss.shop> be transferred to the Complainant.

/Benoit Van Asbroeck/

Benoit Van Asbroeck

Sole Panelist

Date: September 30, 2024