

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Tyson Scott
Case No. D2024-3303

1. The Parties

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

Respondent is Tyson Scott, United States.

2. The Domain Name and Registrar

The disputed domain name <mounjaropharmacy.org> 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to Complainant on August 14, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. 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 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 Respondent of the Complaint, and the proceedings commenced on August 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 11, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 23, 2024.

The Center appointed Clark W. Lackert as the sole panelist in this matter on September 26, 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

Complainant is a global pharmaceutical company with rights in the MOUNJARO trademark (the “Mark”) dating back to as early as November 5, 2019, when it filed for registration of the Mark with the United States Patent and Trademark Office. The Mark was registered on the August 2, 2022, in the United States in association with pharmaceutical preparations for the treatment of diabetes, giving Complainant a constructive use date of November 5, 2019.

The United States Food and Drug Administration (“FDA”) announced its approval of the Mark for use in connection with injectable pharmaceutical products for the treatment of type 2 diabetes on May 13, 2022, and Complainant launched the product in June of 2022. By the end of 2022, the product produced nearly two hundred and eighty million US dollars (USD 280,000,000.00) in revenue. Sales of the MOUNJARO brand product continued to increase since its launch, with Complainant’s 2023 year-end financial report announcing revenue of more than five billion, one hundred sixty million US dollars (USD 5,160,000,000.00) in connection with the product, and second quarter 2024 financial report announcing revenue of more than four billion, eight hundred ninety-seven million US dollars (USD 4,897,000,000.00). Governing bodies similar to the United States FDA have approved MOUNJARO brand product for distribution in various formats in each of the following countries outside the United States: Australia, Canada, Germany, Japan, Kuwait, Poland, Saudi Arabia, Switzerland, the United Arab Emirates, and the United Kingdom. The product is being approved and launched in additional countries over time.

To date, Complainant has obtained at least ninety (90) registrations for the Mark (or its foreign language equivalents) across sixty (60) countries around the world and has twenty-four (24) pending applications for the Mark (or its foreign language equivalents) across twenty-four (24) countries. A sample of these registrations is as follows:

Jurisdiction	Registration Number	Registration Date
United States	6,809,369	August 2, 2022
United States	7,068,463	May 30, 2023
European Union	018209187	September 8, 2020
Mexico	2117473	September 2, 2020
India	5328244	February 14, 2022
Korea (Republic of)	40-1718914	April 22, 2021

The <mounjaro.com> domain name was registered by Complainant on October 21, 2019, and is used to advertise and provide information regarding its MOUNJARO brand product. Complainant has used this domain name to identify a website since at least as early as May 17, 2022.

Respondent registered the disputed domain name on September 8, 2023. The disputed domain name resolves to an online pharmacy website purportedly selling Complainant’s products alongside competing third party products.

5. Parties' Contentions

A. Complainant

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

The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights.

Complainant's use and registration of the MOUNJARO trademark pre-dates Respondent's registration of the disputed domain name. Moreover, the Mark is distinctive. Prior panels found that Complainant's MOUNJARO trademark is an invented word that is distinctive and widely recognized to designate the Complainant's pharmaceutical product. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#); see also *Eli Lilly and Company v. Janni Louche*, WIPO Case No. [D2023-3787](#). An invented word which has acquired a high degree of distinctiveness is deemed to be a highly distinctive mark and a domain name incorporating a highly distinctive mark (or close variations of the same) has a greater tendency to cause confusion. See *Telstra Corporation Limited v. Telsra/Telecomunicaciones Serafin Rodriguez y Asociados*, WIPO Case No. [D2003-0247](#). Therefore, Complainant's Mark is a highly distinctive mark and use thereof in the disputed domain name is likely to cause confusion.

The disputed domain name consists of the highly distinctive Mark, the descriptive term "pharmacy," and the generic Top-Level Domain ("gTLD") ".org". As a result, the relevant portions of the disputed domain name are the Mark and the descriptive term "pharmacy." It is well settled that the addition of a descriptive term does not prevent a finding of confusing similarity. See Section 1.8 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)") (addition of descriptive term to domain with recognizable trademark does not obviate confusion); see also *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#).

Respondent has no rights or legitimate interests in respect of the disputed domain name.

Respondent is not authorized by Complainant to use the Mark in any way and is not using the disputed domain name for a legitimate business purpose. Respondent has no rights or legitimate interests in the disputed domain name. There is no evidence that Respondent is commonly known by the disputed domain name. In addition, 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. Respondent uses the disputed domain name to direct Internet traffic to a website that sells either gray market or potentially counterfeit versions of Complainant's MOUNJARO brand product without a prescription, as well as competing prescription medications, without otherwise disclosing Respondent's lack of a relationship with Complainant.

Additionally, the website associated with the disputed domain name makes no indication that a prescription is required to purchase the MOUNJARO brand product. Prior panels have specifically noted that offering Complainant's products without a prescription cannot support a legitimate right or interest in a disputed domain name. *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#).

The disputed domain name is registered and is being used in bad faith.

A prior Panel has found the Mark is "widely recognized" and that "there can be no doubt that Respondent registered the [D]omain [N]ame with knowledge of Complainant's rights," particularly considering that Respondent is purporting to sell Complainant's own goods (albeit without a prescription and in jurisdictions where it is not legally approved for distribution) under the disputed domain name comprised of Complainant's Mark accompanied only by descriptive terms. This is, itself, indicative of bad faith registration and use. See

Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti, WIPO Case No. [D2023-3674](#). Such is the case here, and the disputed domain name has thus been registered and used in bad faith. According to paragraph 4(b)(iv) of the Policy, evidence of bad faith registration and use is shown when a disputed domain name is registered in order to utilize another's well-known trademark for attracting Internet users to a website for commercial gain. As described above, Respondent is using Complainant's Mark to drive Internet traffic to its website under the disputed domain name order to profit from the sale of counterfeit or gray market products. Prior panels have found that such actions constitute bad faith. *World Market Management Services, LLC v. Aleksandr Butenko*, WIPO Case No. [D2023-2377](#). Further, Respondent is using Complainant's Mark to drive Internet traffic to its website, where it is using the disputed domain name to sell competitive products. Moreover, Respondent is using the disputed domain name to offer prescription-only products without the apparent need to supply a prescription stating "Buy Mounjaro Without Prescription. Mounjaro Pharmacy is the Best Pharmacy to Buy your Medications Online without Prescription.", which further supports a finding of bad faith. See *Eli Lilly and Company v. sahil budhani, Laalishq*, WIPO Case No. [D2023-4568](#) (".... the use of a disputed domain name for illegal activity such as in the present case selling prescription drugs without requiring a prescription constitutes use in bad faith."); see also *CVS Pharmacy, Inc. v. john, ourice*, WIPO Case No. [D2022-0548](#). Complainant's MOUNJARO brand product is only available on a physician's prescription and is manufactured, labeled, and sold in strict compliance with the health authority laws and regulations.

In addition, the content of the website associated with the disputed domain name, in particular the use of Complainant's Mark, misleads users into believing that there is an association between 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 trademark. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#); see also *Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait*, WIPO Case No. [D2023-3670](#) ("In light of the use of Complainant's Mark and the nature of the Respondent's Website, the Panel is in no doubt that Respondent had Complainant and its rights in the Mark in mind when it registered the disputed domain name."). Moreover, prior panels have found that the registration of a domain name that is confusingly similar to a registered trademark by an entity that has no relationship to the mark is sufficient evidence to demonstrate opportunistic bad faith. See *Eli Lilly and Company v. Lilly Careers*, WIPO Case No. [D2016-0641](#).

B. Respondent

The Respondent is in default and did not reply to 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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

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 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, the term "pharmacy", 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.

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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Having reviewed the available record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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 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 disputed domain name in bad faith.

In the present case, the Panel notes that Respondent copied a widely known mark MOUNJARO with the generic term "pharmacy" which indicates an intent to target that mark to promote misdirection of Internet traffic, evidence of bad faith. As [WIPO Overview 3.0](#), section 3.1.4 states: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." In the present case, the Panel notes that Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with Complainant's mark in violation of paragraph 4(b)(iv) of the Policy.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a disputed 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 disputed domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. Panels have held that the use of a disputed domain name for illegal activity, here, selling illegal pharmaceuticals without a prescription, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name in this manner constitutes bad faith under the Policy.

The Panel finds that 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 <mounjaropharmacy.org> be transferred to Complainant.

/Clark W. Lackert/

Clark W. Lackert

Sole Panelist

Date: September 30, 2024