

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Thales Henrique
Case No. D2024-3304

1. The Parties

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

Respondent is Thales Henrique, Brazil.

2. The Domain Name and Registrar

The disputed domain name is <mounjarobrasil.online> which 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 those in the Complaint (Privacy Protect, LLC). 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 14, 2024.

The Center verified that the Complaint together with the amended 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 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 10, 2024.

The Center appointed Gerardo Saavedra as the sole panelist in this matter on September 13, 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.

Preliminary Issue: Proper Respondent

Pursuant to paragraph 1 of the Rules “Respondent means the holder of a domain-name registration against which a complaint is initiated”. The original Complaint named “Privacy Protect, LLC” as Respondent, as it appeared as registrant in the available Whois record. At the Center’s request, the Registrar sent its verification response disclosing Thales Henrique as the registrant of the disputed domain name, and thus on August 14, 2024, Complainant filed an amendment to the Complaint adding Thales Henrique as Respondent. Since the real underlying registrant has been promptly disclosed, the Panel decides to only have Thales Henrique as the proper Respondent.

4. Factual Background

Complainant is a pharmaceutical company headquartered in the United States.

Complainant has rights over the MOUNJARO mark for which it holds, among others, European Union registration No. 018209187, registered on September 8, 2020, in class 5; and United States registration No. 6809369, registered on August 2, 2022, in class 5. Complainant also has rights over an M figurative mark for which it holds, among others, European Union registration No. 018531486, registered on February 2, 2022, in classes 5 and 44; and United States registration No. 6835474, registered on August 30, 2022, in classes 5 and 44.

Complainant appears as the registrant of the domain name <mounjaro.com> created on October 21, 2019.

The disputed domain name was registered on March 27, 2024. Before the Complaint was filed the web site linked to the disputed domain name showed, among others: “MOUNJARO BRASIL” in a logo, “VOCÊ ESTÁ COM DIFICULDADES PARA PERDER PESO?”, the image of a product box showing “mounjaro” and Complainant’s M figurative mark cited above, “ADQUIRA AQUI O SEU MOUNJARO!”, “Aprovado pela Agência Nacional de Vigilância Sanitária (Anvisa) desde setembro de 2023, Mounjaro (tirzepatida), da farmacéutica Eli Lilly, indicado para tratar diabetes tipo 2”,¹ “Devido ainda não ter este medicamento em estoque no Brasil o produto é importado diretamente dos Estados Unidos da América”, “Compra Segura”, “Frete Grátis”, “SOLICITE AGORA! Entre em contato agora com a nossa equipe via WhatsApp”.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy and requests that the disputed domain name be transferred to Complainant. Complainant’s assertions may be summarized as follows.

The United States Food and Drug Administration announced its approval of Complainant’s MOUNJARO brand product for use in connection with injectable pharmaceutical products for the treatment of type 2 diabetes on May 13, 2022. Complainant launched the product in June of 2022, and by the end of 2022, the

¹ In view of that legend, the Panel visited Anvisa’s web site and noticed that the Mounjaro product obtained its registration as new medication in Brazil on September 25, 2023, in the name of Eli Lilly do Brasil (“<https://www.gov.br/anvisa/pt-br/assuntos/medicamentos/novos-medicamentos-e-indicacoes/mounjaro-r-tirzepatida-novo-registro>”). See section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

product produced nearly USD 280,000,000 in revenue. Sales of the MOUNJARO brand product continued to increase and Complainant's 2023 year-end financial report showed revenue of more than USD 5,160,000,000 in connection with that product.

Complainant has an Internet presence at the domain name <mounjaro.com>, which is used to advertise and provide information regarding its MOUNJARO brand product. Complainant has used this domain name to identify a web site since at least as early as May 17, 2022.

The disputed domain name consists of the MOUNJARO mark along with the geographically descriptive term "brasil". It is well settled that the addition of a geographic term does not prevent a finding of confusing similarity. The fact that the disputed domain name incorporates Complainant's mark in its entirety creates sufficient similarity to render it confusingly similar.

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, and Complainant has not given Respondent authorization to use its MOUNJARO mark. 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. The disputed domain name resolves to a web site enabling Respondent to cash in on the strength of the MOUNJARO mark and the reputation of the product with which said mark is associated.

Respondent uses the web site linked to the disputed domain name to sell gray market or potentially counterfeit versions of Complainant's MOUNJARO brand product in Brazil. Such web site makes no indication that a prescription is required to purchase the MOUNJARO brand product.

Respondent fails to accurately disclose its lack of relationship with Complainant which, together with the composition of the disputed domain name and the content of the web site linked to it, lead Internet users to falsely believe that said web site is Complainant's official web site, that Respondent is an authorized distributor of the MOUNJARO brand product, or that Respondent owns the MOUNJARO mark.

Respondent has also failed to identify itself. There is no identifying information, such as a business name, specific physical address, or copyright notice. That failure is further evidence of a lack of rights or legitimate interests.

The disputed domain name has been registered and used in bad faith. Despite having only been on the market for a little more than two years, the MOUNJARO brand product has been referred to as a "blockbuster" success and has received substantial media coverage worldwide. Prior UDRP decisions found that Complainant's MOUNJARO mark is an invented word that is distinctive and widely recognized to designate Complainant's pharmaceutical product. Respondent registered the disputed domain name with knowledge of Complainant's rights, particularly considering that Respondent is purporting to sell Complainant's own goods under a domain name comprised of Complainant's MOUNJARO mark. That is indicative of bad faith registration and use.

Respondent is using Complainant's mark to drive Internet traffic to its web site under the disputed domain name in order to profit from the sale of gray market or otherwise counterfeit products, all while concealing its identity. The content of the web site linked to the disputed domain name, in particular the labeling of the site as "Mounjaro Brasil", misleads Internet users into believing that there is an association between Complainant and such web site, and serves as evidence of an intentional attempt to attract Internet users for commercial gain in bad faith by creating a likelihood of confusion with Complainant's mark.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

The lack of response from Respondent does not automatically result in a favorable decision for Complainant ([WIPO Overview 3.0](#), section 4.3). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that 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.

A. Identical or Confusingly Similar

The Panel finds 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 disputed domain name identically reproduces the MOUNJARO mark, albeit followed by “brasil”. The Panel finds the mark is recognizable within the disputed domain name and that said addition of “brasil” in the disputed domain name does not avoid a finding of confusing similarity between them for the purposes of the Policy ([WIPO Overview 3.0](#), sections 1.7, 1.8 and 1.11.1).

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

B. Rights or Legitimate Interests

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).

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in the disputed domain name. There is no evidence in the case file of any of those, or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent, but rather the opposite may be validly inferred.

The Panel finds that the nature of the disputed domain name carries a risk of implied affiliation as it may mistakenly be seen as suggesting some connection with Complainant’s MOUNJARO mark and the product marketed thereunder. The evidence in the file shows that Respondent commercially operated the web site linked to the disputed domain name to advertise the sale of allegedly Mounjaro products generally, featuring Complainant’s MOUNJARO and M figurative marks, without showing the identity of the operator thereof, and there appears to be no disclaimer as regards the lack of relationship between Complainant and Respondent, thus misleading Internet users into believing that such web site may be somehow associated with Complainant. All that demonstrates neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name.

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.

Based on the available record, 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.

Having reviewed the case file, the Panel finds that Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. Taking into consideration that the registration and use of Complainant's MOUNJARO mark preceded the creation of the disputed domain name, the rapid success in sales of Complainant's MOUNJARO brand product, and the content of the web site linked to the disputed domain name, the Panel is of the view that Respondent deliberately targeted Complainant's mark at the time it registered the disputed domain name, which is indicative of bad faith. As set forth above, the web site associated with the disputed domain name conveys the false impression that it is somewhat associated with Complainant, and there is no evidence of a disclaimer disassociating such web site from Complainant. By using in such way the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with Complainant's marks as to the source, sponsorship, affiliation, or endorsement of Respondent's web site and the products offered therein, which is a showing of bad faith (see paragraph 4(b)(iv) of the Policy). The fact that Complainant's MOUNJARO branded product may only be acquired with a physician's prescription simply reinforces said bad faith inference.²

In this Panel's view, the lack of response is also indicative that Respondent lacks arguments and evidence to support its holding of the disputed domain name.

Based on the available record, 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 <mounjarobrasil.online> be transferred to Complainant.

/Gerardo Saavedra/

Gerardo Saavedra

Sole Panelist

Date: September 27, 2024

² See *F. Hoffmann-La Roche AG v. Shop User*, WIPO Case No. [D2014-1560](#): "the purported offering of a controlled substance without a prescription, constitutes bad faith use."