

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait  
Case No. D2024-3306

### **1. The Parties**

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

The Respondent is Mounjaro Admin, Mounjaro Kuwait, Kuwait.

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

The disputed domain name <mounajrokw.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 13, 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 13, 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 (Contact Privacy Inc. Customer 0169541947) 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 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 the Respondent of the Complaint, and the proceedings commenced on August 27, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 17, 2024.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on September 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 an American pharmaceutical company headquartered in Indiana, United States, and has been in the pharmaceutical industry for over 145 years.

The Complainant's Mounjaro product is an injectable pharmaceutical product for the treatment of type 2 diabetes, approved by the United States Food and Drug Administration on May 13, 2022. In the first half of 2023, the Complainant's sales of MOUNJARO exceeded USD five billion globally.

The Complainant owns multiple trademark registrations for the MOUNJARO mark in 60 countries, including U.S. Registration No. 6,809,369, registered on August 2, 2022, with priority dating back to November 5, 2019, and United Kingdom Registration No. UK00003608193, filed on March 11, 2021, and registered on July 16, 2021.

The Complainant maintains an online presence through its websites, including "www.mounjaro.com", registered on October 21, 2019. The website provides information about the Complainant's company and its MOUNJARO pharmaceutical product.

The disputed domain name was registered on December 07, 2023, and resolves to a website offering the Complainant's MOUNJARO products for sale without a prescription, as well as competing third-party products.

#### **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:

(1) The disputed domain name is confusingly similar to trademarks in which the Complainant has rights. The Complainant has rights to the MOUNJARO trademarks, confirmed by numerous registrations around the world. The disputed domain name consists of the misspelling of the highly distinctive Mark, "mounajro," the term "kw," which is the two-letter country code for Kuwait, and the generic Top-Level Domain ("gTLD") ".com". This does not negate a finding of confusing similarity.

(2) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has not given the Respondent permission, authorization, consent, or license to use its marks. There is no evidence that the Respondent is commonly known by the disputed domain name. The 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. Instead, the Respondent registered the disputed domain name using a privacy-shielding service to direct Internet traffic to a website that purports to sell Complainant's MOUNJARO brand product without a prescription alongside directly competitive third-party medications. The Respondent carries on these activities while failing to disclose its lack of a relationship with the Complainant.

(3) The disputed domain name has been registered and used in bad faith. The Respondent is purporting to sell the Complainant's goods under disputed domain name comprising the Complainant's marks, accompanied only by descriptive terms, which is indicative of bad faith registration and use. The Respondent is using the Complainant's marks to drive Internet traffic to its websites under the disputed domain name to offer prescription products without the apparent need for a prescription, which supports a finding of bad faith. The Respondent's use of the Complainant's MOUNJARO trademark 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.

The Complainant requests transfer of the disputed domain name.

## 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name was registered and is being used in bad faith.

The onus of proving these elements is on the Complainant even though the Respondent failed to submit a Response.

Paragraph 15(a) of the Rules directs the Panel to decide the 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.

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

The Panel finds the Complainant's trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the marks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The Panel also considers that the misspelling of the Complainant's trademark within the disputed domain name cannot prevent a finding of confusing similarity. [WIPO Overview 3.0](#) at section 1.9. The addition of the term "kw" to the Complainant's MOUNJARO mark does not diminish the confusing similarity either. See [WIPO Overview 3.0](#), section 1.8.

It is well accepted by UDRP panels that a gTLD, such as ".com", is typically ignored when assessing whether a domain name is identical or confusingly similar to a trademark. See section 1.11.1 of the [WIPO Overview 3.0](#).

In light of the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and that the first element of paragraph 4(a) of the Policy is satisfied.

## **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.

The Panel found that the Respondent has no trademark rights related to the disputed domain name. The Panel also has not found evidence that the Respondent has been commonly known by the disputed domain name.

The Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant's mark. The Panel also takes into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way.

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.

Given that the disputed domain name consists of a misspelling of the Complainant's trademark, the Panel struggles to conceive any rights or legitimate interests of the Respondent in the disputed domain name. Under such circumstances, any use of the disputed domain name by the Respondent only increases the possibility of the Internet users to falsely attribute the disputed domain name to the activities of the Complainant.

Panels have held that the use of a domain name for illegal or fraudulent activity, here claimed as sale of gray market or illegal pharmaceuticals, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

Based on the evidence presented, noting that the Complainant's trademark predates the registration of the disputed domain name and considering that the disputed domain name resolves to a website featuring the Complainant's MOUNJARO mark and depictions of it as well as third party competitive products, it is inconceivable that the Respondent could not have registered the disputed domain name without knowledge of the Complainant's well-known trademark. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name resolves to a website that sells pharmaceutical products under the trademark MOUNJARO and thereby used the Complainant's logos and copyright-protected images without disclosing the Respondent's lack of a relationship with the Complainant. The impression given by this website would cause Internet users to believe that the Respondent is somehow associated with the Complainant when, in fact, it is not. The Panel holds that by using the disputed domain name, the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its websites in the sense of Policy, paragraph 4(b)(iv).

In addition, the Respondent's misspelling of the Complainant's MOUNJARO trademark in the disputed domain name indicates that the Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to paragraph 4(a)(iii) of the Policy.

Furthermore, according to the unrebutted evidence, the Respondent has engaged in a pattern of registering infringing domain names, preventing the rightsholders from reflecting their marks, which also prove bad faith from the part of the Respondent. See *Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait*, WIPO Case No. [D2023-3670](#) against the same Respondent against the disputed domain name <mounjarokw.com>, which lead to the website with identical content to the Respondent's website associated with the disputed domain name. As stated in [WIPO Overview 3.0](#), section 3.1.2, "UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration. This may include a scenario where a respondent, on separate occasions, has registered trademark-abusive domain names, even where directed at the same brand owner".

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

## 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 <mounajrokw.com> be transferred to the Complainant.

*/Ganna Prokhorova/*

**Ganna Prokhorova**

Sole Panelist

Date: September 25, 2024