

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Rez Bizubaz
Case No. D2024-3317

1. The Parties

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

Respondent is Rez Bizubaz, United States.

2. The Domain Name and Registrar

The disputed domain name <bestmounjarosupply.shop> (the “Domain Name”) 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 13, 2024. On August 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 15, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to Complainant on August 15, 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 21, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 10, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 12, 2024.

The Center appointed Harrie R. Samaras as the sole panelist in this matter on September 19, 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 pharmaceutical company headquartered in Indiana. It registered the MOUNJARO mark (the “Mark”) with the United States Patent and Trademark Office on August 2, 2022 (Registration No. 6,809,369) (“for pharmaceutical preparations for the treatment of diabetes”). After obtaining approval in May 2022 from the United States Food and Drug Administration (“FDA”) for the injectable MOUNJARO branded product (the “Product”) to treat type 2 diabetes, in June 2022, Complainant launched the Product. It has received substantial media coverage including by the Associated Press, Reuters, CNBC, NPR, CNN Health, and Good Morning America.

By the end of 2022, the Product produced nearly USD 280,000,000.00 in revenue. Sales have increased since with Complainant’s second quarter 2024 financial report announcing revenue of more than USD 4,897,000,000.00.

Complainant sells the Product solely by prescription. In addition to the FDA, governing bodies similar to the FDA have approved the 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 United Kingdom.

Complainant registered the domain name <mounjaro.com> on October 21, 2019, which it uses for a website (established about May 2022) that advertises and provides information about the Product.

Respondent registered the Domain Name on September 10, 2023. At the time the Complaint was filed, the Domain Name resolved to a website (“Respondent’s Website” or the “Website”) calling itself “Best Mounjaro Supply Shop” and describing itself as “one of US leading online mail order pharmacies with many satisfied patients since 2001.”. Reflecting the Domain Name, there was a copyright notice on the Website – “Copyright © 2024 bestmounjarosupply.shop” – along with a statement that the Website is “Powered by bestmounjarosupply.shop”.

The Website appeared to be selling either counterfeit or gray market versions of the Product. On the Website’s first page there were various links to order the Product – (“Order Now”, “Place Your Order”). Also, on the first page there was a photograph of boxes of the Product, featuring the Mark. Respondent’s Website prominently displayed the MOUNJARO Mark on various pages explaining, for example, dosage, benefits, features, how to take it, and interactions with other medications and food/drinks. A potential customer may order the Product being sold on Respondent’s Website from a wide range of locations around the world, including jurisdictions in which the product has not been legally approved for distribution and, therefore, without a valid prescription.

Currently, the Domain Name is not connected to a website.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, Complainant contends that the Mark is an invented word that is distinctive and widely recognized to designate the Product. That the Domain Name incorporates Complainant's distinctive Mark in its entirety and creates sufficient similarity to be confusingly similar. The generic Top-Level Domain ("gTLD") must be disregarded when doing a Policy analysis. Adding laudatory terms, such as "best," does not sufficiently distinguish a domain name from a mark and instead increases the likelihood of confusion. Adding descriptive terms, such as "supply," to a domain name that reproduces a complainant's mark makes the domain name confusingly similar to the mark under the Policy.

There is no evidence that Respondent is commonly known by the Domain Name. Respondent registered the Domain Name utilizing a privacy-shielding service to direct Internet traffic to the Website offering gray market or counterfeit Product in jurisdictions in which the product has not been legally approved for distribution, and, therefore, without a valid prescription (as a prescription cannot be legally obtained in jurisdictions where the product has not been authorized for distribution).

Respondent's use of the Domain Name is not justified by the principle that a mark may be used legitimately without its owner's consent to promote a bona fide offering of goods placed on the market by its owner. This is because: (1) the Product was only available for sale in a limited number of jurisdictions, however, the Website allowed users to purchase and ship the Product to over two-hundred jurisdictions around the world, suggesting that the goods offered by Respondent were either gray market goods or counterfeit; (2) Respondent appeared to offer competing third-party products such as Ozempic and Wegovy, which directly compete with the Product; (3) Respondent failed to accurately disclose its relationship (or lack thereof) with Complainant, so the lack of any such statement or disclaimer, together with the incorporation of the Mark in the Domain Name and using Complainant's copyrighted marketing photographs, could lead Internet users to falsely believe that the Website was Complainant's official website, that Respondent was an authorized distributor of the Product, or that Respondent owns the Mark.

Furthermore, marketing the Product in jurisdictions where it is not legally available is evidence that Respondent lacked rights or legitimate interests in the Domain Name. The Product has only been approved or authorized for sale in specified jurisdictions. Despite this, the Website received orders from more than two hundred jurisdictions, including jurisdictions in which there was no authorization to distribute the Product. Thus, Respondent's conduct ran counter to having rights or legitimate interest in the Domain Name.

Complainant has extensively marketed its Products around the world, including the United States. Respondent registered the Domain Name with knowledge of Complainant's rights considering that Respondent is purporting to sell Complainant's own goods.

The confusion caused by Respondent's failure to accurately disclose its lack of relationship to Complainant is compounded by the fact that Respondent has failed to identify itself. There is no identifying information, such as a business name or specific physical address. Instead, the website merely shows a copyright notice stating "Copyright © 2024 bestmounjarosupply.shop," a telephone number, an email address, and an undefined Google Maps location in South Carolina. The Whois information provided by the Registrar indicates Respondent's purported address in Arizona, but it appears the address is for Custom Create Pet Shop. Similarly, the Whois information indicates that Respondent's phone number is for a store in Texas.

Respondent was using the Mark to drive Internet traffic to its website under the Domain Name to profit from the sale of gray market or otherwise counterfeit products (while concealing its identity) and to sell competitive products. And Respondent was using the Domain Name to offer (prescription-only) Products in jurisdictions where prescriptions are not yet available. Therefore, the Products that were offered on the Website could not be legitimately prescribed, which further supports a finding of bad faith.

Moreover, the content of the Website (i.e., use of the Mark and copyright-protected images), misleads users into believing that there is an association between Complainant and the Website, and it serves as evidence of an intentional attempt to attract internet users to the Domain Name for commercial gain in bad faith by creating a likelihood of confusion with the Mark.

Respondent's use of Complainant's Mark in the Domain Name is potentially harmful to the health of many unsuspecting consumers who may purchase products advertised through Respondent's Website under the mistaken impression that they are dealing with Complainant or an authorized distributor of Complainant and, therefore, will be receiving safe and effective drugs approved by health authorities around the world. Complainant's 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.

B. Respondent

Respondent 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 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.

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 Domain Name. Accordingly, the Domain Name is confusingly similar to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. The Top-Level Domain is generally not determinative in establishing whether the Domain Name is confusingly similar to a complainant's mark. [WIPO Overview 3.0](#), section 1.11.

Although the addition of other terms here, the descriptive terms "best" and "supply," may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the 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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the 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 Domain Name such as those enumerated in the Policy or otherwise.

Here, Complainant has not given any third-party permission, authorization, consent or license to use the MOUNJARO Mark in the Domain Name. Furthermore, Respondent has registered the Domain Name to direct Internet traffic to the Website where it is offering gray market or counterfeit Product in jurisdictions in which the Product has not been legally approved for distribution, and therefore without a valid prescription (as a prescription cannot be legally obtained in jurisdictions where the product has not been authorized for distribution). Respondent has also failed to disclose its lack of a relationship with Complainant, while using the Mark in the Domain Name and throughout the Website including in photos of the Product, leaving Internet users to falsely believe that the Website is associated with Complainant.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: sale of counterfeit goods or illegal pharmaceuticals, 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

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 Respondent registered the Domain Name after Complainant began selling the Product and using the Mark in conjunction with the sale of the Product and after Complainant registered its domain name <mounjaro.com> in October 2019. Respondent also registered the Domain Name (September 10, 2023) after the Product was well-publicized internationally (e.g., Associated Press, August 8, 2023; Reuters, August 8, 2023; CNBC, August 8, 2023; NPR, April 27, 2023; CNN Health, April 27, 2023; GMA, April 27, 2023).

Furthermore, Respondent registered the Domain Name that is confusingly similar to Complainant's registered distinctive Mark, merely adding the descriptive terms "best" and "supply" to a trademark that Respondent has no rights or legitimate interests in. Respondent registered a confusingly similar Domain Name to use it with a website selling counterfeit or grey market versions of the Product. For all of the aforementioned reasons, it is more likely than not that Respondent knew of Complainant and its rights in the Mark when registering the Domain Name.

Respondent has also been making bad faith use of the Domain Name. There is no plausible reason for Respondent's selection of a Domain Name that is confusingly similar to the Mark, in which Respondent has no rights or legitimate interests, other than as a deliberate attempt to profit unfairly from confusion with the Mark. See, *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#). Furthermore, Respondent was using the Domain Name as described above to intentionally attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Mark as to the source, sponsorship, affiliation or endorsement of such site or the products or services advertised on such site, within the meaning of paragraph 4(b)(iv) of the Policy.

Panels have held that the use of a domain name for illegal activity (here, selling counterfeit or grey market Product without a prescription) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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.

As noted above, Respondent has currently ceased using the Domain Name in conjunction with the Website. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) 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 Complainant's Mark, the composition of the Domain Name, and Respondent's prior bad faith use of the Domain Name and finds that in the circumstances of this case the passive holding or current non-use of the Domain Name does not prevent a finding of 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 Domain Name <bestmounjarosupply.shop> be transferred to Complainant.

/Harrie R. Samaras/

Harrie R. Samaras

Sole Panelist

Date: September 30, 2024