

## ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Marcus Hautier, Nestle  
Case No. D2024-4973

### 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 Marcus Hautier, Nestle, United States.

### 2. The Domain Name and Registrar

The disputed domain name <zepbound-injections.store> (the "Domain Name") is registered with Hostinger Operations, UAB (the "Registrar"), Lithuania.

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 2, 2024. On December 3, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 4, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name that differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5, 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 December 5, 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.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint and the amendment to the Complaint, and the proceedings commenced on December 9, 2024. In accordance with the Rules, paragraph 5, the due date for a response was December 29, 2024. The Respondent did not submit a response. Accordingly, the Center notified the Respondent's default on January 4, 2025.

The Center appointed A. Justin Ourso III as the panelist in this matter on January 13, 2025. 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, Eli Lilly and Company, manufactures and distributes pharmaceutical drugs worldwide. Since December 5, 2023, it has been selling an injectable pharmaceutical drug that is prescribed to treat obesity under its distinctive ZEPBOUND trademark, which has become well-known in a short time. The Complainant owns a United States registration for its ZEPBOUND trademark, No. 7,288,373, issued on January 23, 2024, with a constructive use date of April 14, 2022, in Class 5 for pharmaceutical preparations for the treatment of obesity; a European Union registration, No. 018688583, for its ZEPBOUND trademark, issued on October 8, 2022, in Class 5 for pharmaceutical preparations for the treatment of obesity and other conditions; and a European Union registration, No. 018748013, for its ZEPBOUND figurative trademark, issued on February 15, 2023, in Class 5 for pharmaceutical preparations for the treatment of obesity and other conditions.

The Complainant owns the domain name <zepbound.com>, registered on April 13, 2022, which redirects to <zepbound.lilly.com>, on which the Complainant has advertised, and provided information on, its ZEPBOUND pharmaceutical products since as early as November 9, 2023.

The Respondent registered the Domain Name on September 24, 2024, without authorization from the Complainant. The Domain Name resolves to a website prominently displaying the Complainant's ZEPBOUND word mark and its distinctive ZEPBOUND figurative mark in a header on each page that offers for sale, including shipping internationally, pharmaceutical ZEPBOUND products, without requiring a prescription and without disclosing or disclaiming a relationship with the Complainant.

#### **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 Domain Name.

Notably, the Complainant contends that the Domain Name resolves to a website that displays the Complainant's distinctive figurative trademark and word mark in a header on each page of the site, displays images of ZEPBOUND products and packaging prominently displaying its ZEPBOUND trademark, and offers to sell pharmaceutical products that are either counterfeit or grey market goods, without requiring a prescription; the Respondent offers to ship its ZEPBOUND products internationally, to countries where the product is not available for sale and where a legitimate prescription cannot be obtained; the sale of counterfeit or grey market pharmaceutical products without a prescription presents a health risk to consumers; the Respondent fails to identify itself on its web site; the Respondent does not disavow any relationship with the Complainant on its website; and the Respondent disclosed false contact information during its registration of the Domain Name.

The Complainant requested transfer of the Domain Name.

##### **B. Respondent**

The Respondent did not submit a response to the Complaint.

## 6. Discussion and Findings

A complainant must prove three elements to obtain relief: (i) the domain name is identical or confusingly similar to a trademark in which the complainant has rights; (ii) the respondent has no rights or legitimate interests in the domain name; and (iii) the respondent registered and is using the domain name in bad faith. Policy, paragraph 4(a).

### A. Identical or Confusingly Similar

The Panel finds that the Complainant's registrations establish its trademark rights in the ZEPBOUND mark. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

The Domain Name incorporates the entire trademark, and the trademark is readily recognizable within the Domain Name, notwithstanding the addition of a hyphen and the word "injections" after the trademark. The Panel finds that the Domain Name is confusingly similar to the trademark. [WIPO Overview 3.0](#), sections 1.7 and 1.8. Accordingly, the Panel concludes that the Complainant has proven the first element: the Domain Name is confusingly similar to a trademark in which it has rights.

### B. Rights or Legitimate Interests

The Respondent has not claimed the existence of any circumstance under the Policy, paragraph 4(c), that demonstrates that a respondent has rights to, or legitimate interests in, a domain name. The Complainant, on the other hand, has shown that it established its trademark rights before the Respondent registered the Domain Name and it has not authorized the Respondent to use its trademarks. Although the Complainant has not presented an argument that the Respondent is not known by the mark, the Panel finds that the Registrar identified the Registrant and the Registrant organization by names that do not resemble the Domain Name and the Respondent provided a contact email address that does not resemble the Domain Name, which tend to show that the Respondent is not known by the Domain Name. The Panel finds that the evidence, therefore, shows prima facie that the Respondent lacks any rights or legitimate interests in the Domain Name under the Policy, paragraph 4(a)(ii), shifting the burden of production on this second element to the Respondent to come forward with relevant evidence proving rights or legitimate interests in the Domain Name. [WIPO Overview 3.0](#), section 2.1. The Respondent has not submitted any evidence to rebut the prima facie evidence.

Importantly, the Panel finds that the Domain Name resolves to a website competing with the Complainant's website, prominently displaying the Complainant's word mark and its figurative mark, displaying images of the Complainant's products and packaging bearing its trademark, and selling likely counterfeit or grey market pharmaceutical products, without requiring a prescription, and shipping the pharmaceutical products internationally, including to countries where the pharmaceutical products are not available for sale and a legitimate prescription cannot be obtained, all without disclaiming an affiliation with the Complainant or disclosing any relationship with the Complainant. This falsely implies an affiliation with the Complainant and presents a risk of harm to the consuming public, which is not a bona fide commercial use, a noncommercial use, or a fair use of the Domain Name. To the contrary, the evidence shows an intended deceptive use for commercial gain. [WIPO Overview 3.0](#), sections 2.5 and 2.13.

Additionally, the Respondent provided a nonexistent contact address, and the Respondent failed to respond to the Complaint. [WIPO Overview 3.0](#), section 2.5.3. Accordingly, the Panel concludes that the Complainant has proven, and the evidence demonstrates, the second element: the Respondent lacks rights or legitimate interests in the Domain Name.

### C. Registered and Used in Bad Faith

The Policy provides that the following circumstance is "evidence of the registration and use of a domain name in bad faith: [ . . . ] by using the domain name, you have intentionally attempted to attract, for

commercial gain, Internet users to your web site . . . , by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site.” Policy, paragraph 4(b)(iv).

The Complainant sells an injectable pharmaceutical drug under its ZEPBOUND trademarks. The Panel finds that the word “injections” in the Domain Name betrays an intent to associate the Domain Name with the Complainant’s trademarks.

Additionally, the Panel finds that the Complainant has proven that the Domain Name resolves to a web site that expressly promotes an affiliation with the Complainant, by using a header that prominently displays the Complainant’s word mark and figurative mark and by displaying images of the Complainant’s pharmaceutical products and packaging, on which the Respondent offers for sale pharmaceutical products that are likely either counterfeit or grey market, for commercial gain. In short, the Panel finds that the Respondent is passing off the site as affiliated with the Complainant, without disclosing or disclaiming any relationship with the Complainant. The Panel finds this conclusive evidence that the Respondent must have been aware of the Complainant’s trademarks, including its distinctive figurative trademark, and of its rights in its marks, at the time that the Respondent registered the Domain Name; the Respondent’s registration and use of the Domain Name targeted the Complainant’s marks; and the Domain Name and the site are intended to attract, misleadingly and deceptively, customers and potential customers of the Complainant, for the Respondent’s commercial gain. [WIPO Overview 3.0](#), sections 3.1.4, 3.2.1, and 3.2.2.

Importantly, the Panel finds that the Respondent also offers international shipping, including to countries where these pharmaceutical products are not available for sale and a legitimate prescription cannot be obtained, which presents a serious risk of harm to the consuming public, which also demonstrates bad faith. [WIPO Overview 3.0](#), sections 3.1.4.

These findings compel the Panel to conclude that the Respondent intentionally registered the Domain Name in bad faith to take unfair advantage of the Complainant’s trademarks, i.e., it targeted the Complainant’s trademarks, and that the Respondent is using the Domain Name in bad faith intentionally to attract Internet users to its site for commercial gain by creating a likelihood of confusion with the Complainant’s trademarks as to the source of the site or the source of the goods offered on the site, in violation of the Policy, paragraph 4(b)(iv). Accordingly, the Panel concludes that the Complainant has proven the third element: the Respondent registered and is using the Domain Name in bad faith.

## **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 <zepbound-injections.store> be transferred to the Complainant.

*/A. Justin Ourso III/*

**A. Justin Ourso III**

Panelist

Date: January 27, 2025