

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Marshall Adam
Case No. D2024-4977

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 Marshall Adam, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <mounjaroforsale.store> is registered with NameCheap, Inc. (the "Registrar").

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 disputed domain name. On December 3, 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, Privacy service provided by Withheld for Privacy ehf) 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 amended Complaint on December 5, 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 the Respondent of the Complaint, and the proceedings commenced on December 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 29, 2024. The Respondent sent email communications to the Center on December 6 and 9, 2024. On December 30, 2024, the Complainant filed a Reply to the Respondent's Statements, together with annexes. On January 6, 2025, the Center notified the parties that it would proceed to Panel Appointment.

The Center appointed Andrew F. Christie as the sole panelist in this matter on January 14, 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, a pharmaceutical company, is a corporation organized under the laws of the State of Indiana, United States, with a principal place of business in Indianapolis, Indiana, United States. It is the owner of 90 trademark registrations across 60 jurisdictions for the word trademark MOUNJARO, including United States Registration No. 6809369 (registered August 2, 2022) and European Union Trade Mark No. 018209187 (registered September 8, 2020).

The Complainant uses the MOUNJARO trademark in respect of pharmaceutical preparations for the treatment of diabetes. The United States Food and Drug Administration announced its approval of the Complainant's MOUNJARO brand product on May 13, 2022, and the Complainant launched the product in June of 2022. By the end of 2022, the product had produced worldwide revenue of nearly USD 280 million. Worldwide revenue for the product was more than USD 5 billion for the Complainant's 2023 financial year, and more than USD 8 billion to the end of the third quarter for 2024.

The Complainant registered the domain name <mounjaro.com> on October 21, 2019, and uses it to advertise and provide information about its MOUNJARO brand product.

The disputed domain name was registered on August 16, 2024. The Complainant provided screenshots, dated November 6, 2024, of pages of the website to which the disputed domain name then resolved. The website purports to offer for sale the Complainant's MOUNJARO brand product, along with competing products from third parties, and accepts billing details from over 200 jurisdictions. As at the date of this decision, the disputed domain name does not resolve to an active location.

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.

The Complainant contends that the disputed domain name is confusingly similar to a trademark in which it has rights on the following grounds, among others. The disputed domain name consists of the highly distinctive MOUNJARO trademark, the generic phrase "for sale" (without a space), and the generic Top-Level Domain ("gTLD") ".store". When assessing similarity between a domain name and a trademark, the gTLD is typically ignored. It is well settled that the addition of a descriptive phrase such as "for sale" to a domain name with a recognizable trademark does not obviate a finding of confusing similarity. The fact that the disputed domain name incorporates the Complainant's highly distinctive trademark in its entirety creates sufficient similarity to render the disputed domain name confusingly similar.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the disputed domain name on the following grounds, among others. There is no evidence that the Respondent is commonly known by the disputed domain name. Moreover, the Respondent is neither using the disputed domain name in connection with the bona fide offering of goods and services nor making a legitimate noncommercial or fair use of the disputed domain name. Instead, the Respondent has registered the disputed domain name utilizing a privacy-shielding service to direct Internet traffic to sell gray market or potentially counterfeit versions of the Complainant's MOUNJARO brand product in jurisdictions where the product has not been legally approved for distribution (and therefore a prescription cannot be legally

obtained) while also selling competitive third-party products. The Complainant has not given the Respondent permission, authorization, consent, or license to use its trademark. The Respondent's use of the disputed domain name is not justified by the principle that a trademark may be used legitimately without its owner's consent to promote a bona fide offering of goods placed on the market by its owner. As outlined in *Oki Data Americas, Inc v. ASD, Inc*, WIPO Case No. [D2001-0903](#), and followed in many subsequent cases, this principle can only be invoked under the Policy if: (i) the respondent is actually offering the goods or services at issue; (ii) respondent uses the website to sell only the genuine trademarked goods or services; (iii) the website accurately discloses the respondent's relationship (or otherwise) with the trademark owner; and (iv) the respondent must not try to corner the market in all domain names and thus deprive the trademark owner of reflecting its own mark in a domain name. If even one of these requirements is not met, the respondent fails the *Oki Data* test and has no rights or legitimate interest in the domain name. The Respondent in this case fails to meet all of the *Oki Data* requirements and has no rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith on the following grounds, among others. The Complainant has extensively marketed its MOUNJARO brand product in the United States and other jurisdictions around the world. There can be no doubt that the Respondent registered the disputed domain name with knowledge of the Complainant's rights, particularly considering that the Respondent is purporting to sell the Complainant's goods (albeit in jurisdictions where it is not legally approved for distribution) under the disputed domain name which is comprised of the Complainant's trademark accompanied only by descriptive terms. The Respondent is using the Complainant's trademark to drive Internet traffic to its website under the disputed domain name to profit from the sale of gray market or otherwise potentially counterfeit products, all while concealing its identity. Additionally, the Respondent is using the Complainant's trademark to drive Internet traffic to its website, where it is selling competitive products. Such actions constitute registration and use of the disputed domain name in bad faith.

B. Respondent

The Respondent sent a number of email communications to the Center.

On December 6, 2024, following an email from the Center inviting the Complainant to amend the Complaint, the Respondent sent an email to the whole content of which was: "I want to change whois info, let me know how to proceed".

On December 9, 2024, following notification of the Complaint, the Respondent sent an email saying, among other things, that: he is a professional web developer; his sole involvement in this matter was the development of the website as a service for a client; he is not the owner, registrant, or operator of the disputed domain name; he has no control over the registration details or the operation of the disputed domain name; and he has not falsified any records. He demanded an immediate cessation of the accusations against him. Soon after, the Respondent sent another email to the Center repeating the above points, and adding: "i have talked the owner already they will handover or cancel domain". Soon thereafter, the Respondent sent a further email to the Center saying: "want to cancel this domain".

Later, on December 9, 2024, following an email from the Center inviting the parties to consider if they wished to suspend the proceedings to implement a settlement agreement, the Respondent sent an email to the Center saying "Signed already", and attaching a signed Domain Name Transfer and Settlement Agreement.

C. Complainant's Further Submission

On December 30, 2024, the Complainant sent an email to the Center saying: "Following receipt of numerous emails from Respondent, Complainant wishes to enter the attached Reply to Respondent's Statements, including the supporting Reply Annexes referenced therein, into the record for the Panelist's consideration. Settlement discussions between the parties have not resulted in a negotiated resolution at this time."

The Complainant's Reply to the Respondent's Statements contained the following contentions, among others. Given the Respondent's admission that he is not the owner, registrant, or operator of the disputed domain name, the true owner of the disputed domain name and the contact information for the same is not reflected in the Whois. Instead, the actual owner appears to have falsely entered the Respondent's information in an effort to shield its identity, which is a ground for finding bad faith registration. The Complaint complies with the Policy, in that it names the Respondent based on information available to the Complainant. The Respondent is listed as the contact and owner of the disputed domain name in the Whois record provided by the Registrar. No other source of information reveals any other individual or organization as the owner of the disputed domain name.

6. Discussion and Findings

A. Identity of the Respondent

The Respondent states that he is "not the owner, registrant, or operator" of the disputed domain name, and by implication contends that the Complaint is wrongly filed against him. The Respondent's contention is erroneous. The person identified by the Registrar as the registrant contact for the disputed domain name is the Respondent for the purposes of the proceeding. In the absence of evidence establishing that the Respondent has been the victim of identity theft or some other like fraud, there is no basis to find that the Complaint has been wrongly filed against the Respondent.

B. 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.

The 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. It is the owner of numerous trademark registrations for the word trademark MOUNJARO.

The entirety of the Complainant's trademark is reproduced within the disputed domain name, followed by the words "for" and "sale". Although the addition of other terms 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 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.

C. 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 considers that the composition of the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1. The evidence establishes that the Respondent has used the disputed domain name to resolve to a website which, by reproducing the Complainant's trademark and products, purports to be affiliated with the Complainant. Furthermore, the Respondent purports to sell not only the Complainant's trademarked goods, but also those of competitors. Also, the disputed domain name does not accurately disclose the Respondent's lack of a relationship with the Complainant. Panels have held that the use of a domain name for illegal activity (e.g., the 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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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.

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

D. 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: (i) the Respondent registered the disputed domain name a number of years after the Complainant first registered its MOUNJARO trademark; (ii) the Complainant has generated enormous sales of the product in respect of which it uses its trademark; (iii) the disputed domain name incorporates the Complainant's trademark in its entirety, and merely adds the word "for", and "sale", which describe the Complainant's product as being available to purchase; and (iv) the Respondent has used the disputed domain name to resolve to a website that purports to offer the Complainant's product for sale. It is clear the Respondent registered the disputed domain name with knowledge of the Complainant's trademark.

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. The evidence shows that the Respondent has used the disputed domain name in an intentional attempt to attract, for commercial gain, Internet users to a website by creating a likelihood of confusion with the Complainant's trademark. Having reviewed the record, the Panel finds that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

The Panel finds that the 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 <mounjaroforsale.store> be transferred to the Complainant.

/Andrew F. Christie/

Andrew F. Christie

Sole Panelist

Date: January 28, 2025