

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. Maria Izabel Manja
Case No. D2024-5014

1. The Parties

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

The Respondent is Maria Izabel Manja, Brazil.

2. The Domain Name and Registrar

The disputed domain name <mounjarobrasil.shop> 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 December 4, 2024. On December 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 6, 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 (DATA REDACTED) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 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 7, 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 December 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 2, 2025.

The Center appointed Daniel Peña as the sole panelist in this matter on January 9, 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 is a recognized pharmaceutical company based in the State of Indiana, United States.

The Complainant owns an injectable pharmaceutical product, prescription-only medicine, trademarked under the name of MOUNJARO, for the treatment of type 2 diabetes, approved by the United States Food and Drug Administration (FDA). The Complainant launched the product in June 2022 and MOUNJARO products obtained a revenue of USD eight billion during the 2024 fiscal year.

MOUNJARO brand pharmaceutical products have also been approved by the FDA for distribution in several countries outside United States but not including Brazil.

The Complainant owns multiple trademark registrations, across the world, including the following:

- United States trademark for MOUNJARO (word mark), No. 6,809,369, in IC 5, registered on August 2, 2022, and in force until February 2, 2029.
- Brazilian trademark for MOUNJARO (word mark) No. 919475787, registered on November 24, 2020.

The disputed domain name was registered on September 26, 2024.

The Complainant has provided evidence where the disputed domain name resolved to a website for potential selling MOUNJARO's products in Brazil.

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 the trademark MOUNJARO is distinctive and widely recognized to designate the Complainant's pharmaceutical product, and that such category has been confirmed by previous panels. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali and Rauf Bhatti*, WIPO Case No. [D2023-3674](#) and *Eli Lilly and Company v. Janni Louche*, WIPO Case No. [D2023-3787](#).

The Complainant contends that the disputed domain name is confusingly similar to its trademark MOUNJARO.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, given that 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; that instead, the Respondent has registered the disputed domain name utilizing a privacy-shielding service to direct Internet traffic to a website that sells gray market or potentially counterfeit versions of the Complainant's MOUNJARO brand product in the Brazil, where the product has not been legally approved for distribution, and therefore without a valid prescription; that the Respondent's use does not comply with the Oki Data Test criteria (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)).

The Complainant contends that the disputed domain name was registered and is being used in bad faith, given that the Respondent is purporting to sell the Complainant's own MOUNJARO's products without any kind of authorization, in a jurisdiction where the Complainant's product has not legally been approved for distribution and prescriptions.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must satisfy each of the three following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the 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.

No Response or any kind of communication has been submitted by the Respondent, despite the fair opportunity given by the Center to present its case in accordance with paragraph 2(a) of the Rules. Therefore, this Panel shall decide this dispute based on paragraph 15(a) of the Rules and will analyze the evidence submitted by the Complainant on the "balance of probabilities" or "preponderance of the evidence" standard. See, paragraphs 14 and 15(a) of the Rules, and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 4.2.

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 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 the MOUNJARO trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant's trademarks are 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 disputed domain name consists of the Complainant's MOUNJARO mark along with the geographic term "brasil", which is the country name of Brazil in Portuguese language. In regard to the disputed domain name, the addition of the term "brasil" to the Complainant's MOUNJARO mark does not prevent the finding of confusing similarity either. See [WIPO Overview 3.0](#), section 1.8.

The Panel further notes that the generic Top-Level Domain ("gTLD") ".shop" is required only for technical reasons and is generally ignored for the purposes of comparison of the Complainant's trademarks to the disputed domain name ([WIPO Overview 3.0](#), section 1.11.1).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks 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.

Based on the available record, the Panel finds that the Respondent has no trademark rights related to the disputed domain name. The Panel also finds that the Respondent has not 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 marks. 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.

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. Even if the products sold by the Respondent were genuine (which is highly unlikely given the prescription-basis through which such pharmaceuticals are sold), such use of the disputed domain name does not meet the requirements established by the “Ok! Data Test”, because the website to which the disputed domain name resolves does not disclose the lack of relationship between the Respondent. [WIPO Overview 3.0](#), section 2.8.

Moreover, the composition of the disputed domain name carries a risk of implied affiliation with the Complainant, which also prevents a finding of rights or legitimate interests. [WIPO Overview 3.0](#), section 2.5.1.

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. 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, the disputed domain name was registered and is being used in bad faith. The disputed domain name was registered long after the Complainant registered its MOUNJARO trademark, and the use of the Complainant’s trademarks cannot be a coincidence.

The Complainant has several MOUNJARO trademark registrations predating the disputed domain names. The Panel draws attention to a prior UDRP panel’s finding that the MOUNJARO mark is “widely recognized” and that “there can be no doubt that the Respondent registered the disputed [D]omain [N]ame with knowledge of the Complainant’s rights”, particularly considering that the Respondent is purporting to sell the Complainant’s goods (albeit in jurisdictions where they are not legally approved for distribution) under the disputed domain name that comprise the Complainant’s mark accompanied only by descriptive terms. This, in itself, is indicative of bad faith registration and use. See *Eli Lilly and Company v. Shoaib Manzoor, XMart Host, Zain Ali, and Rauf Bhatti*, WIPO Case No. [D2023-3674](#). Noting that the Complainant’s trademarks

predate the registration of the disputed domain name and considering that the disputed domain name resolved to a website featuring the Complainant's MOUNJARO mark and depictions of its products, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well known trademarks. In the circumstances of this case, this is evidence of registration in bad faith.

The disputed domain name resolved to website that appeared to sell 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). Moreover, panels have held that the use of a domain name for illegitimate activities, such as in the present case – selling prescription drugs without requiring a prescription and/or selling to countries where the pharmaceutical product does not have marketing authorization – constitutes use in bad faith. [WIPO Overview 3.0](#), section 3.4.

The Panel finds that the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy. Thus, 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 <mounjarobrasil.shop> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: January 23, 2025