

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Silas Evangelista da Cruz  
Case No. D2024-5172

### **1. The Parties**

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

The Respondent is Silas Evangelista da Cruz, Brazil.

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

The disputed domain name <mounjarobrasil.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 16, 2024. On December 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 19, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 9, 2025.

The Center appointed Kateryna Oliinyk 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 owns numerous trademark registrations for the MOUNJARO trademark, including the following:

- United States Trademark Registration No. 6,809,369 for MOUNJARO filed on November 5, 2019, and registered on August 2, 2022, for goods in International Class 5;
- United States Trademark Registration No. 7,068,463 for MOUNJARO, filed on June 21, 2022 and registered on May 30, 2023, for services in International Class 44;
- United Kingdom Trademark Registration No. UK00003608193 for MOUNJARO, filed on March 11, 2021 and registered on July 16, 2021, for goods in International Class 5;
- European Union Trademark Registration No. 018209187, for MOUNJARO, filed on March 11, 2020 and registered on September 8, 2020, for goods in International Class 5.

The United States Food and Drug Administration announced its approval of a prescription pharmaceutical under the MOUNJARO trademark on May 13, 2022. The Complainant launched the product in June of 2022 and since that time the pharmaceutical under the MOUNJARO trademark has undergone marketing authorization procedures in a number of other jurisdictions.

And namely, the National Health Surveillance Agency (ANVISA) approved the pharmaceutical under the MOUNJARO trademark in Brazil on September 25, 2023, though the product is not yet available for distribution and sale, and ANVISA has issued warnings about the sale of dangerous counterfeits as a result of the fact that the actual product is not available.

The Complainant also has an Internet presence for its pharmaceutical under the MOUNJARO trademark, available at the domain name <mounjaro.com>. The Complainant's domain name <mounjaro.com> was created on October 21, 2019 and has been used to advertise and provide information regarding pharmaceutical under the MOUNJARO trademark at least as early as May 17, 2022.

The disputed domain name was created on January 23, 2024 and it has been used for re-direction to a website under the domain name <mounjarobrasil.com.br>. The <mounjarobrasil.com.br> domain name is itself the subject of a recent brDRP decision,<sup>1</sup> wherein the panel found in favor of the Complainant and ordered the domain name <mounjarobrasil.com.br> be transferred to the Complainant. Before it was deactivated for transfer to the Complainant, the website under the domain name <mounjarobrasil.com.br> prominently displaying the Complainant's trademark was being used to purportedly sell gray market and counterfeit versions of the Complainant's Tirzepatide pharmaceutical under the MOUNJARO trademark in Brazil, where it is currently unavailable for official distribution. The website stated it shipped product "from the United States to your home" "with or without a prescription".

As of the date of this Decision, the disputed domain name is passively held.

#### 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.

---

<sup>1</sup> The complaint was filed under Regulamento do Sistema Administrativo de Conflitos de Internet Relativos a Nomes de Domínios Sob ".BR" — Saci-Adm, *Eli Lilly and Company v. H.L.*, WIPO Case No. [DBR2024-0034](#).

### **Identical or confusingly similar**

The Complainant contends that the Complainant's MOUNJARO trademark is an invented word that is distinctive and widely recognized to designate the Complainant's pharmaceutical product, thus it benefits from the high degree of distinctiveness.

The Complainant states that the disputed domain name is confusingly similar with the Complainant's trademark as the disputed domain name includes the Complainant's MOUNJARO trademark. The Complainant further contends that addition of the geographical term "brasil" does not preclude the misleading similarity between the Complainant's MOUNJARO trademark and the disputed domain name.

### **Rights or legitimate interests**

The Complainant contends that the Respondent lacks any rights or legitimate interests in the disputed domain name.

According to the Complainant's contentions, the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register the disputed domain name.

The Complainant further claims that the Respondent fails to meet the requirements set forth in *Oki Data test (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. [D2001-0903](#))* and has no rights or legitimate interests in the disputed domain name.

The Complainant additionally contends that the marketing of MOUNJARO brand products in jurisdictions where it is not legally available and selling the prescription drug without the prescription cannot support rights or legitimate interests in the disputed domain name.

The Complainant additionally asserts that the Respondent had constructive notice of the MOUNJARO trademark, in light of the Complainant's multiple trademark registrations throughout the world.

### **Registration and use in bad faith**

The Complainant contends that the Respondent knew of the Complainant's trademark when registering the disputed domain name.

The Complainant further asserts that the disputed domain name in itself suggests at least an affiliation with the Complainant and its trademark.

The Complainant also alleges that that the Respondent must have been aware of the Complainant and its trademark when it registered the disputed domain name and that the Respondent uses the disputed domain name to intentionally attract and divert Internet users to its website in order to take advantage of the Complainant's reputation and goodwill.

### **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "[a] Panel shall decide a 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."

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- 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 has been registered and is being used in bad faith.

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its decision on the statements and documents submitted in accordance with the Policy and the Rules. Under paragraph 5(f) and paragraph 14(b) of the Rules, if a respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint, and where a party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

### **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.

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.

The entirety of the mark is reproduced within the disputed domain name with the addition of the geographical term "brasil" followed by the generic Top-Level Domain ".com".

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "brasil", may bear on assessment of the second and third elements, the Panel finds the addition of such term 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.

### **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 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 notes that there is no evidence that the Respondent is commonly known under the MOUNJARO trademark. According to the Complainant, it has not authorized the Respondent to use the MOUNJARO trademark nor the Complainant does carry out any activity for or has any business with the Respondent.

Further, the Panel notes that neither license nor authorization appears to have been granted to the Respondent to make any use of the Complainant's MOUNJARO trademark, or to apply for registration of the disputed domain name by the Complainant.

And namely, based on the evidence produced by the Complainant the Panel has established that the disputed domain name has been used for re-direction to a website under the domain name <mounjarobrasil.com.br>. The <mounjarobrasil.com.br> domain name has been subject of a brDRP decision, wherein the panel found in favor of the Complainant and ordered the domain name be transferred to the Complainant. Before it was deactivated for transfer to the Complainant, the website under the domain name <mounjarobrasil.com.br> was being used to purportedly sell gray market and counterfeit versions of the Complainant's Tirzepatide pharmaceutical under the MOUNJARO trademark in Brazil, where it is currently unavailable for official distribution. The website stated it shipped product "from the United States to your home", "with or without a prescription".

Based on the current record, the Panel cannot make a conclusion if the MOUNJARO products sold on the website at the disputed domain name are counterfeits or not. However, the Panel need not make a determination as to the genuine nature of the goods offered.

According to section 2.8.1 of the [WIPO Overview 3.0](#)., panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark – with other terms appended to the trademark as within the domain name to undertake sales or repairs related to the complainant's goods or services – may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name. Outlined in the "Oki Data test" (*Oki Data Americas, Inc. v. ASD Inc.*, WIPO Case No. [D2001-0903](#)), the following cumulative requirements will be applied in the specific conditions of a UDRP case:

- i. the respondent must actually be offering the goods or services at issue;
- ii. the respondent must use the site to sell only the trademarked goods or services;
- iii. the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and
- iv. the respondent must not try to "corner the market" in domain names that reflect the trademark.

Respectively, even if the website to which the disputed domain name used to redirect Internet users has been created to sell original MOUNJARO products, the current case at least does not satisfy the third requirement under the *Oki Data* test because the evidence provided by the Complainant shows that there have been no accurate and prominent disclaimer regarding the Respondent's (lack of) relationship with the Complainant shown on the website to which the disputed domain name redirected the Internet users.

Further, the Panel agrees with the Complainant that the use of the disputed domain name by the Respondent has been designed to attract and mislead web users into believing that the Respondent has been authorized by the Complainant to promote and sell purported MOUNJARO pharmaceutical products. Moreover, the composition of the disputed domain name, which incorporates the Complainant's trademark together with the geographical term is inherently confusing as it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0](#), section 2.5.1).

Panels have held that the use of a domain name for illegitimate activity, here the alleged impersonation/passing off, and purportedly selling counterfeit products or grey market goods, can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1.

Therefore, the conduct of the Respondent fails to constitute a bona fide offering of goods or services, or legitimate noncommercial or fair use of the disputed domain name.

After a complainant has made a prima facie case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1.

Here, the Respondent has provided no evidence of any rights or legitimate interests in the disputed domain name. In the absence of any evidence rebutting the Complainant's prima facie case indicating the Respondent's lack of rights or legitimate interests in respect of the disputed domain name, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

As of the date of this Decision the disputed domain name is passively held. Passive holding does not equate to a bona fide offering of goods or services or a legitimate noncommercial or fair use and does not preclude a finding of lack of rights or legitimate interests under the circumstances of this case.

The Panel therefore 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) 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.

Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent "[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent's] website or other online location, by creating a likelihood of confusion with complainant's mark as to the source, sponsorship, affiliation, or endorsement of [respondent's] website or location or a product or service on [respondent's] website or location".

The Panel accepts that the Complainant's use and registration of the MOUNJARO trademark predated the Respondent's registration of the disputed domain name. The Respondent clearly knew of the Complainant's business and trademark as the disputed domain name has been used to re-direct to a website purportedly offering products bearing the Complainant's trademark.

Furthermore, the Complainant has not licensed or otherwise permitted the Respondent to use its MOUNJARO trademark or to register the disputed domain name incorporating the Complainant's MOUNJARO trademark.

In this case, the Panel concludes, on the balance of probabilities, that the Respondent's business and website are not genuine and that the disputed domain name was registered and has been used in order to target the Complainant's trademark and business goodwill. The Panel has reached this conclusion for the following reasons:

- The Respondent has failed to file a Response in the proceeding, or to make any reply to the Complainant's submissions that it has no rights or legitimate interests in respect of the disputed domain name and that it registered and has used the disputed domain name in bad faith;

- the composition of the disputed domain name, which incorporates the Complainant's trademark together with a geographical term, is inherently confusing as it effectively impersonates or suggests sponsorship or endorsement by the Complainant;
- the use of the disputed domain name by the Respondent has been designed to attract and mislead web users into believing that the Respondent has been authorized by the Complainant to promote and sell purported MOUNJARO branded products.

The Panel concludes in the circumstances that the Respondent did not register the disputed domain name for the purposes of a bona fide business, but instead to take unfair advantage of the goodwill attaching to the Complainant's MOUNJARO trademark, to attract Internet users to its website by creating a likelihood of confusion with the Complainant's trademark.

Panels have held that the use of a domain name for illegitimate activity here, claimed impersonation/passing off constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds 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.

Factoring that the current passive holding of the disputed domain name does not preclude the finding of bad faith under the circumstances of this case, specifically factoring that it is caused by the deactivation of the website to which the disputed domain name re-directed the Internet users by the Complainant.

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 <mounjarobrasil.com> be transferred to the Complainant.

*/Kateryna Oliinyk/*

**Kateryna Oliinyk**

Sole Panelist

Date: February 3, 2025