

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. monjaro ali
Case No. D2023-3872

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 monjaro ali, United States.

2. The Domain Name and Registrar

The disputed domain name <mounjaroaustralia.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 15, 2023. On September 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 18, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on September 19, 2023, 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 October 2, 2023.

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 October 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 26, 2023.

The Center appointed Georges Nahitchevansky as the sole panelist in this matter on November 2, 2023. 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, Eli Lilly Company, is a pharmaceutical company headquartered in Indianapolis, Indiana, United States. Complainant develops, manufactures, markets, distributes and sells a number of pharmaceutical products around the world. In June 2022, Complainant launched an injectable pharmaceutical product for the treatment of type 2 diabetes under the name and mark MOUNJARO. Since its launch Complainant's MOUNJARO product has been sold in the United States and in other countries with much success.

Complainant owns many trademark registrations and applications around the world for its MOUNJARO mark. These include (i) a registration in the United States (Registration No. 6,809,369) that issued to registration on August 2, 2022, (ii) a registration in the European Union (Registration No. 018209187) that issued to registration on September 8, 2020, and (iii) a registration in Australia (Registration No. 2080191) that issued to registration on April 7, 2020. Complainant also owns and uses the domain name <mounjaro.com> to provide information concerning Complainant and its MOUNJARO product.

Respondent appears to be based in the State of Florida in the United States. Respondent registered the disputed domain name on May 20, 2023. Respondent has used and currently uses, the disputed domain name with a website purporting to offer Complainant's MOUNJARO product for sale online in Australia. Respondent's website includes photographs and information regarding Complainant's MOUNJARO product and features Complainant's exact MOUNJARO logo at the bottom of each of the pages within Respondent's website.

5. Parties' Contentions

A. Complainant

Complainant maintains that its rights in the MOUNJARO name and mark date back to November 2019. Complainant further maintains that it has strong rights in the MOUNJARO mark not only on account of Complainant's numerous trademark registrations for the MOUNJARO mark around the world but as a result of the tremendous success of Complainant's MOUNJARO product since its launch in June 2022, as evidenced from its enormous sales and widespread media recognition.

Complainant asserts that the disputed domain name is confusingly similar to Complainant's MOUNJARO mark as the disputed domain name consists of the distinctive MOUNJARO trademark with the non-distinguishing geographic designation "Australia."

Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name as Respondent (i) is not commonly known by the disputed domain name, (ii) has no permission or authorization from Complainant to use the MOUNJARO mark, and (iii) is using the disputed domain name "to direct Internet traffic to a website that sells either counterfeit or gray market versions [of] Complainant's MOUNJARO brand product without a prescription, all while using Complainant's copyright protected images and without disclosing Respondent's lack of a relationship with Complainant."

Lastly, Complainant argues that Respondent has registered and used the disputed domain in bad faith as Respondent knowingly registered the disputed domain name to use such to attract and redirect web traffic to a website purporting to sell counterfeit or gray market MOUNJARO products without a prescription, which Complainant maintains is required for the purchase of Complainant's MOUNJARO products, and without identifying Respondent's identity or lack of relationship to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. Section 1.2.1. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Complainant has provided evidence that it owns a number of trademark registrations for the MOUNJARO mark in multiple jurisdictions around the world, including the United States, Australia, and the European Union, and that it has used the MOUNJARO mark well before Respondent registered the dispute domain name.

With Complainant's rights in the MOUNJARO mark established, the remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the Top Level Domain such as ".com") is identical or confusingly similar with Complainant's mark. See *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010-0842](#). The threshold for satisfying this first element is low and generally panels have found that fully incorporating the identical mark in a disputed domain name is sufficient to meet this standing requirement.

In the instant proceeding, the disputed domain name is confusingly similar to Complainant's MOUNJARO mark as it fully incorporates Complainant's MOUNJARO mark. The addition of the geographic term "Australia" does not prevent a finding of confusing similarity as the MOUNJARO mark is clearly recognizable in the disputed domain name. The Panel therefore finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its rights in Complainant's MOUNJARO mark and in showing that the disputed domain name is confusingly similar to that trademark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the complainant must make at least a *prima facie* showing that the respondent possesses no rights or legitimate interests in a disputed domain name. *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once the complainant makes such a *prima facie* showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

The evidence submitted in this proceeding shows that Respondent has used the disputed domain name for a website that offers Complainant's MOUNJARO products for sale in Australia. Reviewing the evidence before the Panel, it is not altogether clear whether Respondent may be selling counterfeit or knock off versions of Complainant's MOUNJARO products, as Complainant suggests, or whether Respondent is selling genuine MOUNJARO products obtained legitimately or otherwise. Complainant has not provided evidence establishing that the MOUNJARO products being offered for sale on Respondent's website are in fact

counterfeits or knock offs. However, a review of Respondent's website suggests that Respondent might not in fact be selling genuine MOUNJARO products by(i) using statements such as "You might SAVE UP TO 90% if you buy Mounjaro online at our store," and (ii) including multiple generic references to the product being sold as Tirzepatide, an antidiabetic medication used for the treatment of type 2 diabetes and for weight loss that is sold under various brand names including MOUNJARO. Indeed, the fact that Respondent states on the website at the disputed domain name that a consumer can obtain MOUNJARO products through Respondent without a prescription (a current requirement to obtain MOUNJARO products), makes it questionable whether the products being sold by Respondent are genuine. Nevertheless, while the Panel finds Respondent website to be very suspicious, particularly as Respondent has failed to appear in this proceeding, the Panel cannot on the evidence submitted conclude that Respondent is in fact selling counterfeit products as opposed to genuine MOUNJARO products sourced legitimately.

That being said, the Panel notes that if the products being sold on Respondent's website are in fact counterfeits or knock offs of Complainant's MOUNJARO products, then Respondent would clearly not have a legitimate interest in the disputed domain name. See generally [WIPO Overview 3.0](#) at section 2.13. But assuming, for the sake of argument, that the products being sold on Respondent's website are in fact genuine products, the question then is whether Respondent as an unauthorized reseller of genuine MOUNJARO products, could have a legitimate interest in the disputed domain name. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#) at section 2.8.

Here it is doubtful that Respondent has a legitimate interest in or is making fair use of the disputed domain name. Although reselling legitimately obtained genuine products could be seen as supporting a legitimate interest or use, Respondent has taken the extra step of registering a domain name that on its face suggests a connection to Complainant, or which likely will be seen as an official domain name of Complainant for Australia, and then using such with a website that essentially impersonates Complainant or, at the very least, suggests a connection to Complainant. Respondent's website includes an exact copy of Complainant's MOUNJARO logo on each and every page, copies Complainant's official marketing images for its MOUNJARO products, uses text that suggests, or is likely to be seen as suggesting, an official website of Complainant for consumers in Australia, and includes a copyright notice that on its face reinforces that the website is an official site of Complainant in Australia. Additionally, Respondent's website does not include any disclaimer or information concerning Respondent's true identity and lack of relationship with Complainant.

Such actions by Respondent, in their totality, appear to have been designed to suggest that Respondent's website at the disputed domain name is affiliated with, connected to or authorized by Complainant, when such is not the case. Thus while Respondent might conceivably have a legitimate basis for reselling legitimately sourced MOUNJARO products online to consumers in Australia, it is not legitimate for Respondent to essentially impersonate or suggest some form of connection, sponsorship or endorsement by Complainant for purposes of selling products – even if they are genuine MOUNJARO products. Respondent is not connected to Complainant and taking measures to misleadingly imply an affiliation with Complainant is not a legitimate or fair use even under the "Oki Data Test." [WIPO Overview 3.0](#) at sections 2.5.1 and 2.8.2.

As Complainant has established with sufficient evidence that it owns rights in the MOUNJARO mark, and taking into account Respondent's above noted actions and failure to appear in this proceeding to try and justify its actions, the Panel concludes that Respondent does not have a right or legitimate interest in the disputed domain name and that none of the circumstances of paragraph 4(c) of the Policy are evident in this case.

C. Registered and Used in Bad Faith

In view of the fact that Respondent has registered the disputed domain name that fully incorporates Complainant's MOUNJARO mark with the geographic term "Australia," and given Respondent's above noted actions and failure to appear in this proceeding, it is easy to infer that Respondent was likely well aware of Complainant's MOUNJARO mark when Respondent registered the disputed domain name.

Given the tremendous success of Complainant's MOUNJARO products and the likelihood that the disputed domain name and associated website are likely to be viewed by consumers as an official website of Complainant, or at the very least a website authorized to sell Complainant's MOUNJARO products, it is evident that Respondent has opportunistically registered and used the disputed domain name to intentionally and misleadingly attract Internet users to Respondent's website for Respondent's own profit. See [WIPO Overview 3.0](#), Section 3.1.4 (and cases cited therein).

Accordingly, the Panel finds that Complainant succeeds under this 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 <mounjaroaustralia.com> be transferred to Complainant.

/Georges Nahitchevansky/

Georges Nahitchevansky

Sole Panelist

Date: November 16, 2023