

## **ADMINISTRATIVE PANEL DECISION**

Eli Lilly and Company v. Abdul Rauf Raza  
Case No. D2023-4937

### **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 Abdul Rauf Raza, Pakistan.

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

The disputed domain name <mounjarouk.org> (the “Disputed Domain Name”) is registered with CloudFlare, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 27, 2023. On November 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 29, 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 (DATA REDACTED) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same date 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 November 30, 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 the Respondent of the Complaint, and the proceedings commenced on November 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 20, 2023. On November 30, 2023, the Respondent acknowledged receipt of the Center’s notification but did not send a formal Response. On December 21, 2023, the Center confirmed that it would proceed to Panel Appointment.

The Center appointed Flip Jan Claude Petillion as the sole panelist in this matter on December 26, 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

The Complainant, Eli Lilly and Company, is a pharmaceutical company based in the State of Indiana, United States.

The Complainant is the owner of numerous trademarks including the following:

- MOUNJARO, United States word mark registered under No. 6,809,369 on August 2, 2022, in class 5.
- MOUNJARO, United Kingdom word mark registered under No. UK00003608193 on July 16, 2021, in class 5.
- United States figurative mark registered under No. 6,835,474 on August 30, 2022, in classes 5 and 44:



- UK Figurative mark registered under No. UK00003680298 on November 26, 2021, in classes 5 and 44:



The Complainant uses the MOUNJARO brand to promote an injectable pharmaceutical product for the treatment of diabetes and is the owner of the domain name <mounjaro.com>.

The Respondent registered the Disputed Domain Name on July 24, 2023. The Panel observes that the Disputed Domain Name currently resolves to a website that appears to offer for sale the Complainant's Mounjaro product, displaying the MOUNJARO word and figurative marks.

#### 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 Disputed Domain Name is confusingly similar to a trademark in which it claims to have rights. According to the Complainant, its use and registration of the MOUNJARO trademark predates the Respondent's registration of the Disputed Domain Name; the MOUNJARO trademark is distinctive; and the Disputed Domain Name is confusingly similar to the MOUNJARO mark as the Disputed Domain Name consists of the distinctive MOUNJARO mark, the geographically descriptive term "uk," and the generic Top-Level Domain ("gTLD") ".org". The Complainant claims that it is well settled that the addition of a geographic term does not prevent a finding of confusing similarity.

The Complainant further claims that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. To the best of the Complainant's knowledge, there is no evidence that the Respondent is commonly known by the Disputed Domain Name and the Respondent is not 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. Moreover, the Complainant contends that the Respondent is not authorized by Complainant to use the MOUNJARO trademark.

Finally, the Complainant claims that the Disputed Domain Name was registered and is being used in bad faith. According to the Complainant, the MOUNJARO trademark is widely recognized and there can be no doubt that the Respondent registered the Disputed Domain Name with knowledge of the Complainant's rights. The Complainant also asserts that the Respondent is using the MOUNJARO mark to drive Internet traffic to its website under the Disputed Domain Name to profit from the sale of counterfeit or gray market products, all while concealing its identity. According to the Complainant, the content of the website associated with the Disputed Domain Name, misleads users into believing that there is an association between the Complainant and the website, and serves as evidence of an intentional attempt to attract internet users to the Disputed Domain Name for commercial gain in bad faith by creating a likelihood of confusion with the MOUNJARO trademark. Moreover, the Respondent is using the Disputed Domain Name to offer prescription-only products without a prescription, which, in the Complainant's view, supports a finding of bad faith.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. On November 30, 2023, the Respondent sent an informal communication stating the following: "I just received your email regarding moujaro domain how can i help you".

## **6. Discussion and Findings**

### **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.

Based on the available record, the Panel finds 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 Panel finds the entirety of the mark is reproduced 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.

Additionally, the Panel finds that the addition of another term – here, "uk" – 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.

It is well established that gTLDs, here ".org", may be disregarded when considering whether the Disputed Domain Name is confusingly similar to a trademark in which the Complainant has rights.

Based on the available record, 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 the Respondent has not apparently been commonly known by the Disputed Domain Name, and that the Respondent does not seem to have acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is “Abdul Rauf Raza”. The Respondent’s use and registration of the Disputed Domain Name was not authorized by the Complainant.

Fundamentally, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant’s mark is often central to this inquiry. Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The Disputed Domain Name incorporates the Complainant’s MOUNJARO trademark in its entirety, merely adding the term “uk”. In the Panel’s view, this combination may even increase the risk of confusion with the Complainant as it can easily be considered as referring to the UK (United Kingdom) website of the Complainant’s group. Therefore, the Panel finds that the Disputed Domain Name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Beyond looking at the domain name and the nature of any additional terms appended to it, UDRP panels assess whether the overall facts and circumstances of the case, including the content of the website linked to the disputed domain name and the absence of a response, support a fair use or not. [WIPO Overview 3.0](#), section 2.5.2. and 2.5.3.

The Disputed Domain Name refers to a website displaying the Complainant’s MOUNJARO word and figurative mark and appearing to offer identical or at least similar goods (injectable prescription medicine) as the Complainant.

The Panel notes that the website linked to the Disputed Domain Name claims to make “Mounjaro affordable for people in All over The World”, specifically inviting visitors to “Buy Mounjaro Online in Mexico” and in the United Kingdom. According to the Complainant, its Mounjaro product is not currently approved for sale in Mexico and auto-injector pens are not legally available in the United Kingdom (where the product is only legally available in vials). In the Panel’s view, the goods offered by the Respondent are therefore either grey market goods or otherwise counterfeit. Moreover, the Respondent does not accurately and prominently disclose its relationship with the Complainant. As a result, the Respondent fails the so-called “Oki Data test”

for legitimate resellers, distributors or service providers of a complainant's goods or services. [WIPO Overview 3.0](#), section 2.8; see also *Eli Lilly and Company v. Mounjaro Admin, Mounjaro Kuwait*, WIPO Case No. [D2023-3670](#).

Moreover, in view of the above, the Panel finds that the Respondent's use of the Disputed Domain Name may amount to illegal activity. Panels have held that the use of a domain name for illegal activity – here, the illegal sale of pharmaceuticals or counterfeit goods – can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. By failing to provide a substantive response, the *prima facie* case established by the Complainant has not been rebutted.

Based on the available record, 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.

In the present case, the Panel notes that the Disputed Domain Name appears to resolve to a website offering products similar or even identical to the products sold under the Complainant's trademarks and mentioning the Complainant's MOUNJARO word and figurative marks. In the Panel's view, this indicates that the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. See *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, WIPO Case No. [D2014-2227](#).

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.

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#). See also [WIPO Overview 3.0](#), section 3.2.2.

In the present case, the Panel finds that the Respondent must have been aware of the Complainant and its trademark rights when it registered the Disputed Domain Name as:

- the Disputed Domain Name incorporates the Complainant's word mark with the addition of the common abbreviation "uk", which can easily be linked to the Complainant's activities;
- the website linked to the Disputed Domain Name displays the word and figurative marks of the Complainant and appears to offer goods similar or even identical to the Complainant's goods;
- the website linked to the Disputed Domain Name lists one of the Complainant's legitimate street addresses as the contact address;
- the Panel finds that the Complainant's MOUNJARO trademark is distinctive and well known.

As mentioned above, the Panel also finds that the Respondent's use of the Disputed Domain Name may amount to illegal activity. Panels have held that the use of a domain name for illegal activity – here, the illegal sale of pharmaceuticals or counterfeit goods – 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.

By failing to provide a substantive response to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Based on the available record, 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 <mounjarouk.org> be transferred to the Complainant.

*/Flip Jan Claude Petillion/*

**Flip Jan Claude Petillion**

Sole Panelist

Date: January 10, 2023