

ADMINISTRATIVE PANEL DECISION

Eli Lilly and Company v. milestone developers
Case No. D2024-0647

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 milestone developers, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <mounjaro.uno> 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 February 12, 2024. On February 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 14, 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 (Privacy Protect LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 15, 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 February 15, 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 February 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 14, 2024.

The Center appointed William A. Van Caenegem as the sole panelist in this matter on March 21, 2024. 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 major United States based pharmaceutical company. The Complainant filed for registration of the MOUNJARO mark on November 5, 2019, with the United States Patent and Trademark Office. The trademark was registered on the principal register (Registration No. 6,809,369) on August 2, 2022, in association with pharmaceutical preparations for the treatment of diabetes. The Complainant has obtained at least ninety (90) registrations for the Mark (or its foreign language equivalents) across sixty (60) countries around the world. In its Complaint, it provides registration certificates to support its claim to ownership of the mark in jurisdictions other than the United States.

On May 13, 2022, the United States Food and Drug Administration approved the drug branded MOUNJARO for use in connection with injectable pharmaceutical products for the treatment of type 2 diabetes. By the end of 2022, the product generated nearly USD two-hundred and eighty million in revenue worldwide, increasing to revenue of more than USD five billion, one hundred sixty million by the end of 2023.

The Complainant also has an Internet presence for MOUNJARO at <mounjaro.com>. That domain name was registered by the Complainant on October 21, 2019, and is used to advertise and provide information regarding its MOUNJARO product. The Complainant has used this domain name to identify a website since May 17, 2022.

The disputed domain name was registered on December 15, 2023, and resolved to a website purporting to be selling the Complainant's MOUNJARO products, along with information about yoga classes.

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 the fact that the disputed domain name incorporates the Complainant's highly distinctive mark in its entirety which creates sufficient similarity to render that domain name confusingly similar. With the exception of the generic Top-Level Domain ("gTLD"), the disputed domain name consists solely of the Complainant's distinctive trademark, and it is thus identical and confusingly similar to the Complainant's MOUNJARO mark, the Complainant says.

The Complainant has not given the Respondent permission, authorization, consent or license to use its registered trademark, and the Complainant says that the Respondent also has no rights or legitimate interests in it. There is no evidence that the Respondent is commonly known by the disputed domain name and 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 it, the Complainant asserts.

The Complainant points out that the Respondent has registered the disputed domain name using a privacy shield to direct Internet traffic to a website selling gray market or potentially counterfeit versions of the Complainant's MOUNJARO brand product without requiring a prescription and in jurisdictions where the product is not legally available (and therefore a prescription cannot be legally obtained).

The Complainant contends that the Respondent carries on these activities while attempting to impersonate the Complainant by prominently displaying the MOUNJARO logo in the header of its website, using the Complainant's copyright-protected images, appropriating the Complainant's press releases, and otherwise failing to disclose the Respondent's lack of a relationship with the Complainant.

The Complainant also contends that none of the factors outlined in *Oki Data Americas, Inc v. ASD, Inc*, WIPO Case No. [D2001-0903](#), and followed in many subsequent cases, are present in this matter. The Complainant points out that the goods offered by the Respondent are either gray market goods, counterfeit, or otherwise unauthorized. The Complainant says that the Respondent fails to accurately disclose its relationship (or lack thereof) with the Complainant, while prominently displaying the latter's branding and marketing images. The website to which the disputed domain name resolves contains false and misleading messages relating to counterfeit and gray marketed MOUNJARO products.

The Complainant adds to all the foregoing, that a prior panel has agreed that the marketing of MOUNJARO brand products in jurisdictions where it is not legally available serves as evidence that the Respondent lacks rights or legitimate interests in the disputed domain name. It is said that the Respondent also has constructive notice of the MOUNJARO mark, in light of the Complainant's multiple trademark registrations throughout the world.

The Complainant asserts that the MOUNJARO trademark was registered in 2019, and heavily promoted. Particularly considering also that the Respondent is purporting to sell the Complainant's own goods (albeit without any apparent need for a prescription and in jurisdictions where it is not approved for distribution) under a domain name comprised of the Complainant's brand, there can be no doubt that the Respondent is fully aware of the Complainant's rights. That the Respondent is using the disputed domain name to offer prescription-only products without any apparent requirement for a prescription or in jurisdictions where prescriptions are otherwise not yet available, further supports a finding of bad faith, the Complainant contends.

The Complainant also maintains that the content of the website associated with the disputed domain name, in particular the use of the Complainant's trademarks and copyright-protected marketing images, 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 for commercial gain in bad faith by creating a likelihood of confusion with the registered trademark.

The Complainant notes that despite having only been on the market for a little over a year and a half, MOUNJARO brand product has been referred to as a "blockbuster" success and has received substantial media coverage worldwide. Recent Panels, the Complainant says, have found bad faith registration, as well as no rights or legitimate business interests, even though MOUNJARO brand product has only been on the market since June of 2022.

Lastly, the Complainant asserts that the Respondent's use of the Complainant's trademark in the disputed domain name is potentially harmful to the health of many unsuspecting consumers who may purchase products advertised through the Respondent's website under the mistaken impression that they are dealing with the Complainant or an authorized distributor of the Complainant and, therefore, will be receiving safe and effective drugs approved by health authorities around the world.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.2.1).

The entirety of the mark is reproduced within the disputed domain name. The gTLD extension is to be ignored for present purposes. Accordingly, the disputed domain name is identical to the MOUNJARO trademark of the Complainant for the purposes of the Policy ([WIPO Overview 3.0](#), section 1.7).

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 advanced any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Prior Panels have held that the use of a domain name for illegal activity, here impersonation of the Complainant's web presence by unauthorized copying of its marks, logos and copyright works, and purported sale of pharmaceutical products that require a prescription in jurisdictions where it cannot be legally obtained, can never confer rights or legitimate interests on a respondent ([WIPO Overview 3.0](#), section 2.13.1).

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.

In the present case, the Panel notes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark. The Respondent has engaged in this activity by acquiring a domain name that is identical to the Complainant's highly distinctive and widely reputed trademark, establishing a website in conjunction with it that misuses multiple forms of intellectual property of the Complainant, and offering counterfeit and illegal products for

sale. The illegality stems inter alia from the lack of prescription for the obtaining of the relevant medication where that is required by law.

Panels have held that the use of a domain name for this type of illegal activity 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.

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 <mounjaro.uno> be transferred to the Complainant.

/William A. Van Caenegem/

William A. Van Caenegem

Sole Panelist

Date: April 4, 2024