

ADMINISTRATIVE PANEL DECISION

bioMérieux v. Name Redacted

Case No. D2023-3166

1. The Parties

The Complainant is BioMérieux, France, represented by Plasseraud IP, France.

The Respondent is Name Redacted¹.

2. The Domain Name and Registrar

The disputed domain name <biomerieix.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 24, 2023. On July 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 24, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 4, 2023, 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 amended Complaint on August 9, 2023.

The Center verified that the Complaint together with the amended 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”).

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST 12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 15, 2023.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on October 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

The Complainant is a French biotechnology company set up in 1963, and doing business in more than 160 countries.

The Complainant is the owner of BIOMERIEUX trademark in different jurisdictions. By way of example:

- United States Patent and Trademark Office with registration number 3906321, registered on January 18, 2011;
- European Union Trademark Office with registration number 17912668, registered on June 5, 2018;
- International trademark with registration number 1478156, registered on June 4, 2018.

BIOMERIEUX trademark is to be considered well-known in previous decisions rendered under the UDRP.

The Complainant owns a portfolio of domain names in connection to the mark BIOMERIEUX. Such as <biomerieux.com> registered on May 31, 1996.

The disputed domain name was registered on July 10, 2023, and was inactive at the time of filing of the Complaint. The disputed domain name has been registered by impersonating an existing employee of the Complainant's subsidiary, bioFire, who is not involved in the dispute. The registration record claims the Respondent to be part of the "biomerieux" organization.

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 a typosquatting case and that the Respondent concealed his identity via a privacy shield service, and the contact information provided appears to be false. In addition, the Complainant notes that the registrant disclosed by the Registrar is part of staff of a subsidiary of the Complainant who is not involved in the dispute and therefore in an attempt of impersonation.

B. Respondent

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

6. Discussion and Findings

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

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

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a substantive Response. This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

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

As set out in [WIPO Overview 3.0](#), section 1.9, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.

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.

While 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 often-impossible 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. 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 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.

Indeed, none of the examples of circumstances giving rise to rights or legitimate interests enumerated in the paragraph 4(c) of the Policy apply in the present case.

Panels have held that the use of a domain name for illegal activity (e.g., phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Further, the Panel also notes that the typosquatting nature of the disputed domain name is inherently misleading and as such renders any fair use implausible.

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.

The Panel notes section 3.1.4 of [WIPO Overview 3.0](#) where: “[p]anels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or, widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”.

Having reviewed the record, the Panel notes the distinctiveness or reputation of the Complainant’s trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name do not prevent a finding of bad faith under the Policy.

Further, as set out in [WIPO Overview 3.0](#), section 3.6: “[p]anels additionally view the provision of false contact information...as an indication of bad faith”. Here, noting the Respondent’s apparent registration of the disputed domain name via the use of information belonging to an employee of the Complainant’s subsidiary, the Panel finds such fraudulent registration to be reflective of the Respondent’s broader bad faith intent to impersonate the Complainant.

Based on the available record, 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, <biomerieux.com>, be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: October 16, 2023