

ADMINISTRATIVE PANEL DECISION

bioMérieux v. Privacy service provided by Withheld for Privacy ehf / alona jackson

Case No. D2022-2114

1. The Parties

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

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / alona jackson, United States of America (“USA”).

2. The Domain Name and Registrar

The disputed domain name <biomerieux.cam> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2022. On June 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On June 13, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on June 13, 2022, 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 June 17, 2022.

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”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 8, 2022.

The Center appointed Jeremy Speres as the sole panelist in this matter on July 18, 2022. 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 multinational biotechnology company, notably active in the field of diagnostic solutions. Founded in 1963, it is present in 44 countries including the USA – the Respondent's country – and serves more than 160 countries through a network of distributors. The Complainant trades under the BIOMÉRIEUX or BIOMERIEUX mark, which has been recognised as well known by numerous prior UDRP panels.

The Complainant owns many registrations for its trade mark around the world, including USA trade mark registration no. 3906321 BIOMERIEUX, registered on January 18, 2011, in classes 1, 5, 9 and 10. The Complainant's main website is hosted at the domain name <biomerieux.com>, which the Complainant registered on May 31, 1996. The Complainant operates various national websites, including one for its USA presence hosted at the domain name <biomerieux-usa.com>, which the Complainant registered on March 31, 2000.

The Domain Name was registered on April 13, 2022, and does not resolve to an active website. At the time of drafting of this Decision, the Domain Name had been placed on "clientHold" status by the Registrar, suspending its resolution in the Domain Name System.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is identical to its BIOMERIEUX mark, that the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name was registered and used in bad faith under the doctrine of passive holding given that the Complainant's mark is well known, has no dictionary meaning, and it is implausible that the Respondent could have used the Domain Name in good faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Name is plainly identical to the Complainant's registered BIOMERIEUX mark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant's un rebutted evidence establishes that its BIOMERIEUX and BIOMÉRIEUX mark was registered and used extensively, including in the Respondent's country, and well known for many years prior to registration of the Domain Name. The Domain Name is identical to the Complainant's BIOMERIEUX mark, and the Complainant has certified that the Domain Name is unauthorised by it.

Generally speaking, UDRP panels have found that domain names identical to a complainant's trade mark carry a high risk of implied affiliation (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 2.5.1).

There is no evidence that any of the circumstances set out in paragraph 4(c) of the Policy, nor any others which might confer rights or legitimate interests upon the Respondent, pertain. The Complainant has satisfied paragraph 4(a)(ii) of the Policy by virtue of having made out an un rebutted *prima facie* case ([WIPO Overview 3.0](#) at section 2.1).

C. Registered and Used in Bad Faith

Panels have consistently found that the mere registration of a domain name that is identical to a well-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#) at section 3.1.4).

The Complainant's mark was well known long prior to registration of the Domain Name. It is invented, has no semantic value which the Respondent might, in good faith, have sought to adopt, and is highly specific to the Complainant. Thus, there is no conceivable good faith use to which the Respondent could put the Domain Name, and it is highly likely that the Respondent had the Complainant's mark in mind when it registered the Domain Name, alternatively, the Respondent should have known that the Domain Name would be identical to the Complainant's mark ([WIPO Overview 3.0](#) at section 3.2.2).

This conclusion is bolstered by the Respondent's choice of the Top-Level-Domain ("TLD") ".cam". Given what is stated above regarding the nature and repute of the Complainant's mark, it is likely that the TLD was chosen by the Respondent to spoof the Complainant's main website at <biomerieux.com>. In *Alstom v. WhoisGuard Protected, WhoisGuard, Inc. / Richard Lopez, Marines Supply Inc*, WIPO Case No. [D2021-0859](#), the Panel recognised the typosquatting risk associated with the gTLD ".cam" vis-à-vis ".com" domain names in circumstances such as these.

It is noteworthy that the Domain Name was registered the day after the Complainant announced the acquisition of a USA microbiology company, which was publicised in the media. Considering the other circumstances of this case described above, this timing suggests that the Respondent could well have sought to capitalise on the Complainant's immediate exposure in the media by registering the Domain Name.

The fact that, at the time of lodging the Complaint and drafting of this Decision, the Domain Name did not resolve to any website does not prevent a finding of bad faith under the doctrine of passive holding. For the reasons identified above, all the factors that panels typically consider under that doctrine favour the Complainant ([WIPO Overview 3.0](#) at section 3.3).

The Panel draws adverse inferences from the Respondent's failure to take part in the present proceeding where an explanation is certainly called for ([WIPO Overview 3.0](#) at section 4.3), and the use of a privacy proxy service ([WIPO Overview 3.0](#) at section 3.6).

The Complainant has satisfied paragraph 4(a)(iii) 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 Domain Name, <biomerieux.cam>, be transferred to the Complainant.

/Jeremy Speres/

Jeremy Speres

Sole Panelist

Date: July 29, 2022