

## **ADMINISTRATIVE PANEL DECISION**

**bioMérieux v. Domains By Proxy, LLC / LONGMAN DESTINY**  
**Case No. D2022-2524**

### **1. The Parties**

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

The Respondent is Domains By Proxy, LLC, United States of America (“United States”) / LONGMAN DESTINY, United States.

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

The disputed domain name <biosmerieux.com> is registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 11, 2022. On July 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 12, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 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 July 21, 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 July 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 12, 2022.

The Center appointed Rodrigo Azevedo as the sole panelist in this matter on August 16, 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 founded in 1963, that operates under the corporate name and mark BIOMÉRIEUX.

The Complainant owns numerous BIOMÉRIEUX trademark registrations in different countries and regions, such as:

- International Trademark Registration No.1392389, registered on October 25, 2017;
- International Trademark Registration No. 1478156, registered on June 4, 2018;
- European Union Trademark Registration No.17912668, registered on June 5, 2018;
- French Trademark Registration No. 4416795, registered on January 3, 2018;
- United States Trademark Registration No. 3906321 registered on January 18, 2011; and
- United States Trademark Registration No. 5830553, registered on August 13, 2019.

The Complainant is also the owner of many domain names including “biomerieux” alone or combined with other elements, such as <biomerieux.com>, registered on May 31, 1996.

The Respondent registered the disputed domain name <biosmerieux.com> on June 13, 2022.

At the time the complaint was filed the disputed domain name did not resolve to any active website. The Panel accessed the disputed domain name on August 28, 2022, at which time the disputed domain name did not resolve to any active website.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant makes the following contentions:

- The disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The disputed domain name incorporates the BIOMERIEUX trademark with the addition of the letter “s” in the first syllable, followed by the gTLD “.com”. Undisputedly, such difference is not of a nature to prevent a finding of confusing similarity between the signs in comparison. A gTLD may be ignored for the purpose of assessing the confusing similarity, because they only play a technical function. It is also well established that if at least a dominant feature of the relevant mark is recognizable in the disputed domain name, then the disputed domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. Therefore, the Complainant argues that it is a typical case of “typosquatting”, in which the disputed domain name appears extremely close to the Complainant’s trademark.

- The Respondent has no rights or legitimate interests in respect of the disputed domain name. First of all, the disputed domain name does not correspond to the name of the Respondent, nor to any trademark registered in the name of the Respondent. Secondly, the disputed domain name appears to be confusingly similar to the Complainant’s trademark BIOMERIEUX and the Complainant has never given its consent for the Respondent to use its trademark, nor any other similar sign such as “BIOSMERIEUX” in a domain name registration or in any other manner. Besides, the BIOMERIEUX trademark is not only intrinsically extremely distinctive and globally well-known, but it is exclusively associated with the Complainant. Thirdly, there is absolutely no evidence of any fair or non-commercial or *bona fide* use of the disputed domain name in connection with goods and services because the disputed domain name is not used. UDRP panels have

already considered that an inactive website shows the absence of legitimate non-commercial or fair use of the disputed domain name, especially when the disputed domain name is close to the Complainant's trademark. At last, any legitimate interest of the Respondent in the disputed domain name is all the more inconceivable that the Complainant's rights are globally well-known.

- The disputed domain name was registered and is being used in bad faith. The Respondent appears to be located in the United States, where the Complainant holds several registered trademarks. Consequently, the Respondent shall be considered as having a constructive notice of the Complainant's prior rights. The trademark BIOMERIEUX is intrinsically highly distinctive and exclusively relate with the Complainant, not constituting an existing word in the dictionaries, nor even a suggestive term. All the BIOMERIEUX trademarks registered worldwide exclusively belong to the Complainant or to companies of its group. The trademark BIOMERIEUX is extremely well-known not only in the medical field, but also before the general public, for decades now. Therefore, the choice of the disputed domain name cannot be reasonably explained otherwise than as a reference to the Complainant and to its trademark. The Respondent has hidden its identity and contact information through a privacy service. Once the identity of the Respondent was revealed by the Registrar, the contact details provided contained inconsistencies. The use in bad faith is demonstrated, firstly, by the fact that the disputed domain name does not resolve to an active website. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. In the present case, all these criteria are met. Any use of the disputed domain name in good faith by the Respondent is squarely implausible, all the more that said disputed domain name convey a very high risk of implied affiliation with the Complainant whereas the Respondent has absolutely no relation with the latter. As a result, one can only conclude that the passive holding of the disputed domain name amounts to bad faith use in this case.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, a complainant shall prove the following three elements:

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

### **A. Identical or Confusingly Similar**

The Panel has no doubt that BIOMÉRIEUX is a trademark directly connected with the Complainant's biotechnology services.

The Complainant has provided evidence of numerous trademark registrations for BIOMÉRIEUX, obtained since at least 2011.

The disputed domain name incorporates the BIOMÉRIEUX trademark with the addition of the letter "s" in the first syllable, followed by the gTLD ".com".

Such misspelling of the Complainant's trademark is a practice commonly called typosquatting, a kind of cybersquatting in which a respondent registers a domain name in order to take advantage of typing errors eventually made by Internet users seeking a complainant's website (see *CPP, Inc. v. Virtual Sky*, WIPO Case No. [D2006-0201](#)).

It is also well established that the addition of a gTLD such as ".com" is typically irrelevant when determining whether a domain name is confusingly similar to a complainant's trademark.

As a result, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, and that the Complainant has satisfied the first element of the Policy.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides some examples without limitation of how a respondent can demonstrate rights or legitimate interests in a domain name:

(i) before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or

(ii) the respondent has been commonly known by the domain name; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue.

Based on the Respondent's default and on the *prima facie* evidence in the Complaint, the Panel finds that the above circumstances are not present in this particular case and that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has not licensed or authorized the use of its trademarks to the Respondent, and it does not appear from the present record that the Respondent is commonly known by the disputed domain name. The Respondent has not indicated any reason to justify why it has chosen the specific term "biosmerieux" to compose the disputed domain name.

There is also no evidence to demonstrate the Respondent's intent to use or to make preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

Also, the Complainant's trademark BIOMÉRIEUX – or its variation "biosmerieux" – is a neologism, without any dictionary meaning.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and the Complainant has proven the second element of the Policy.

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

When the disputed domain name was registered by the Respondent in 2022, the trademark BIOMÉRIEUX was already directly connected to the Complainant's biotechnology services.

The disputed domain name differs from the Complainant's mark by the mere inclusion of one letter. The trademark BIOMÉRIEUX" – or its variation "biosmerieux" – has no dictionary meaning.

The Respondent had the opportunity to justify the adoption of this peculiar expression. It preferred to remain silent, in a non-collaborative posture.

Therefore, the Panel concludes that it would not be feasible to consider that the Respondent, at the time of the registration of the disputed domain name, could not have been aware of the Complainant's trademark, and that the adoption of term "biosmerieux" could be a mere coincidence.

Currently, no active website is linked to the disputed domain names, but this does not prevent the Panel's findings that the disputed domain name is also being used in bad faith.

In the Panel's view, the circumstances of this case, including:

- (a) the Respondent not presently using the disputed domain name;
- (b) the Respondent not indicating any intention to use the disputed domain name;
- (c) the Respondent not providing justifications for the registration of domain names containing a third-party famous trademark;
- (d) the use of privacy services when registering the disputed domain name;
- (e) the lack of any plausible good faith reason for the adoption of the term "biosmerieux" by the Respondent,

are enough in this Panel's view to characterize bad faith registration and use in the present case.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith, and the Complainant has also satisfied 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 <biosmerieux.com> be transferred to the Complainant.

*/Rodrigo Azevedo/*

**Rodrigo Azevedo**

Sole Panelist

Date: September 5, 2022