

ADMINISTRATIVE PANEL DECISION

bioMérieux v. May Padi
Case No. D2022-3696

1. The Parties

The Complainant is bioMérieux, United States of America (“United States”), represented by Plasseraud IP, France.

The Respondent is May Padi, United States.

2. The Domain Name and Registrar

The disputed domain name <biomer1eux.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 4, 2022. On October 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 6, 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 October 11, 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 October 18, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 7, 2022. On October 26, 2022, the Center received an email communication from a third party. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 8, 2022.

The Center appointed Evan D. Brown as the sole panelist in this matter on November 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 biotechnology company. It owns the trademark BIOMERIEUX which it has registered in several jurisdictions, including the United States (e.g., Reg. No. 3906321, registered on January 18, 2011). According to the Whois records, the disputed domain name was registered on August 19, 2022. The Respondent has used the disputed domain name to display a Registrar-provided web page containing pay-per-click advertisements. The Complainant has submitted evidence showing that the Respondent has established MX records associated with the disputed domain name, suggesting that the disputed domain name may be used to send and receive email messages. The Complainant has submitted evidence showing that the Respondent registered the disputed domain name using a physical contact address and phone number connected to a company that the Complainant acquired in 2014.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to the Complainant's trademark; that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions. A third party connected to the Complainant contacted the Center on October 26, 2022, regarding its receipt of the Center's written communication, which had been sent to the physical contact details disclosed by the Registrar for the Respondent.

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied: (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 has been registered and is being used in bad faith. The Panel finds that all three of these elements have been met in this case.

A. Identical or Confusingly Similar

This first element under the Policy functions primarily as a standing requirement. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7. This element requires the Panel to consider two issues: first, whether the Complainant has rights in a relevant mark; and second, whether the disputed domain name is identical or confusingly similar to that mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#). The Complainant has demonstrated its rights in the BIOMERIEUX mark by providing evidence of its trademark registrations.

The disputed domain name is comprised of the BIOMERIEUX mark except that the second letter "i" in the mark is replaced by the numeral "1" which is visually similar to the replaced letter. When viewed without

great scrutiny within an email address or in a web browser, the disputed domain name resembles the BIOMERIEUX mark quite closely. Accordingly, the disputed domain name is confusingly similar to the BIOMERIEUX mark for purposes of the policy. See *America Online, Inc. v. John Zuccarini*, WIPO Case No. [D2000-1495](#) (finding that “the mere addition of a minor misspelling...does not create a new or different mark in which the Respondent has rights. Instead it results in a domain name that is confusingly similar to Complainant’s mark”.)

The Complainant has established this first element under the Policy.

B. Rights or Legitimate Interests

The Panel evaluates this element of the Policy by first looking to see whether the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. If the Complainant makes that showing, the burden of production of demonstrating rights or legitimate interests shifts to the Respondent (with the burden of proof always remaining with the Complainant). See [WIPO Overview 3.0](#), section 2.1; *AXA SA v. Huade Wang*, WIPO Case No. [D2022-1289](#).

On this point, the Complainant asserts, among other things, that: (1) the disputed domain name does not correspond to the name of the Respondent or any trademark registered in the Respondent’s name, (2) the Complainant has not consented to the Respondent’s use of the BIOMERIEUX mark in a domain name, and (3) there is no evidence of any fair or noncommercial use, or *bona fide* use of the disputed domain name in connection with goods or services. Instead, the Respondent has used the disputed domain name to display pay-per-click ads (which in this situation does not establish rights or legitimate interests) and perhaps has used the disputed domain name to send fraudulent email messages. Moreover, the mere typosquatting nature of the disputed domain name reflects the Respondent’s illicit intent to mislead unsuspecting Internet users unaware of the typographical variation in the disputed domain name.

The Panel finds that the Complainant has made the required *prima facie* showing. The Respondent has not presented evidence to overcome this *prima facie* showing. And nothing in the record otherwise tilts the balance in the Respondent’s favor. Accordingly, the Panel finds that the Complainant has established this second element under the Policy.

C. Registered and Used in Bad Faith

The Policy requires a complainant to establish that the disputed domain name was registered and is being used in bad faith. The Policy describes several non-exhaustive circumstances demonstrating a respondent’s bad faith registration and use. Under paragraph 4(b)(iv) of the Policy, a panel may find bad faith when a respondent “[uses] the domain name to intentionally attempt to attract, for commercial gain, Internet users to [respondent’s] website or other online location, by creating a likelihood of confusion with complainant’s mark as to the source, sponsorship, affiliation, or endorsement of [respondent’s] website or location or a product or service on [the respondent’s] website or location”.

Because the BIOMERIEUX mark is so well known, it is implausible to believe that the Respondent was not aware of it when it registered the disputed domain name. In the circumstances of this case, the mere registration of a domain name that is confusingly similar to a well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith registration of the disputed domain name. *Government Employees Insurance Company v. Joel Rosenzweig, RegC*, WIPO Case No. [D2021-1221](#). Similarly, the Respondent’s awareness of the Complainant is clearly exhibited by the Respondent’s use of contact details associated with a company acquired by the Complainant in 2014. Similarly, the use of said fraudulent contact details also exhibits the Respondent’s bad faith. Further, bad faith use is shown from the Respondent’s activities of using the disputed domain name to present pay-per-click links for commercial gain. *Id.* If the Respondent is using the disputed domain name to send fraudulent email, then that conduct would further underscore bad faith use.

For these reasons, the Panel finds that the Complainant has successfully met this third element.

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 <biomer1eux.com> be transferred to the Complainant.

/Evan D. Brown/

Evan D. Brown

Sole Panelist

Date: November 30, 2022