

ADMINISTRATIVE PANEL DECISION

bioMérieux v. David wolord

Case No. D2022-3963

1. The Parties

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

The Respondent is David wolord, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <biomorieux.com> (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 October 21, 2022. On October 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 24, 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 (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 25, 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 27, 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 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 18, 2022.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on November 23, 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 multinational biotechnology company, headquartered in Marcy L'Etoile, France. The Complainant offers diagnostic solutions that are being used in order to diagnose infectious diseases in agri-food, pharmaceutical and cosmetic products. The Complainant has been operating its business since 1963 and is currently active in more than 160 countries. In the year 2021, the Complainant generated revenues of EUR 3.38 billion.

The Complainant is the owner of several trademark registrations, including, but not limited to the International Registration for the trademark BIOMERIEUX (word), with registration No. 1392389 and registration date of October 25, 2017, for services in classes 35, 37, 41, 42, and 44, designating, *inter alia*, Australia, China, Singapore, and the United States. Moreover, the Complainant is owner of the United States trademark BIOMERIEUX (word), with registration No. 3906321 and registration date of January 18, 2011, for goods in classes 1, 5, 9, and 10 (together in singular also referred to as the "Trademark").

The Domain Name was registered on October 11, 2022, and resolves to a website (the "Website"), which indicates that the Domain Name is being parked, and includes different sponsored links to third-party websites.

5. Parties' Contentions

A. Complainant

The Complainant contends the following:

The Domain Name is confusingly similar to the Trademark in which the Complainant has rights. More specifically, the Domain Name is composed of the Trademark in its entirety and merely substitutes the letter "e" for the letter "o". By doing so, the Domain Name clearly mimics the Complainant's Trademark and/or Complainant's existing domain name, and deliberately introduces a mistyping. The mistyping and/or typo squatting of the Trademark and/or domain name causes confusion amongst Internet users regarding the affiliation with or ownership by the Complainant.

The Respondent has no prior rights or legitimate interests in regard to the Domain Name. The Domain Name does not in any way correspond with the name of the Respondent. Moreover, the Respondent has not secured any registered rights, such as a trademark registration, in regards to the Domain Name. Furthermore, the Respondent has not been authorized or otherwise permitted by the Complainant to register a domain name using the Trademark. In addition to this, there is no legitimate noncommercial or fair use of the Domain Name or preparations thereof, whereas the Domain Name resolves to a parking page containing different sponsored links to third-party websites. According to established case law a parking page as such cannot by itself confer rights or legitimate interest in a domain name upon a registrant.

Furthermore, the Domain Name has been registered and is being used in bad faith. The Respondent registered the Domain Name with prior knowledge of the Trademark. The Respondent chose to register a Domain Name that copies the well-known trademark of the Complainant. Therefore, there is no plausible explanation other than that the Respondent must have been aware of the Complainant's rights and activities at the time of the registration. Moreover, the Respondent is intentionally using the Domain Name to attract Internet users by creating a likelihood of confusion with the Complainant's Trademark.

After investigations, the Complainant noticed that not only MX servers were configured for the Domain Name but also SPF records. Meaning that the Respondent can send out emails using "biomorieux.com" and the

Respondent can subsequently check whether the recipient has received such emails.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

(i) the 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 Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has sufficiently proven to have rights in the Trademark. Moreover, the Complainant has proven to have rights in many countries worldwide including, but not limited to, the United States, where the Respondent purports to be located.

The Domain Name consists of the Trademark and solely substitutes the first of the two letters "e" for the letter "o". Therefore, the Trademark is clearly recognizable in the Domain Name and the misspelling as such does not prevent a finding of confusing similarity between the Domain Name and the Complainant's Trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant in its Complaint and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the Domain Name.

The Panel could not find any evidence by referring to the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

(i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or

(ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not required any trademark or service mark rights; or

(iii) making legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the Domain Name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the Domain Name, and the Panel is unable to establish any such rights or legitimate interests on the basis of evidence in front of it.

In more detail, the Complainant asserted that the Respondent is not affiliated with the Complainant in any way. The Respondent has not been authorized or otherwise permitted by the Complainant to use the Trademark or register a domain name with the Complainant's Trademark.

Moreover, there is no evidence that "biomorieux" is the Respondent's name or that the Respondent is commonly known under this name. To the contrary, the name of the Respondent that has since been disclosed does not at all correspond to the Domain Name.

In addition to this, the Website to which the Domain Name resolves, merely functions as a parked page displaying multiple sponsored pay-per-click links. Consequently, the Panel considers that the Respondent is not making use of the Domain Name in connection with a *bona fide* offering of goods or services or for noncommercial or fair use purposes.

Moreover, the Complainant has asserted that MX servers and SPF records haven been configured for the Domain Name, which would be an indication for possible phishing attempts. This has not been rebutted by the Respondent.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in relation to the Domain Name.

Therefore, the Panel is satisfied that the second element of the Policy is met.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent has registered and used the Domain Name in bad faith and refers to its considerations under section 6.B. above.

Taking into consideration the evidence filed by the Complainant, the Panel finds that the Trademark and the Complainant's activities are well known in many countries in the world. Moreover, the Complainant is owner of numerous trademarks and is active in many countries in the world, amongst others, in the United States where the Respondent purports to be located. In addition to this, the Panel considers the fact that for its official website the Complainant uses the domain name <biomerieux.com>, and the Domain Name is almost identical to the Complainant's domain name.

Accordingly, in the Panel's view, this is an obvious case of typosquatting and certainly lacking a Response, leads to a finding of registration and use in bad faith. In accordance with section 3.1.4 of the [WIPO Overview 3.0](#), panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

Certainly lacking a Response, the Panel finds that there is no other plausible explanation than that the Respondent was aware of the existence of the Complainant's rights and activities at the time the Respondent registered the Domain Name.

Furthermore, in the circumstances of this case, the fact that the Website at the Domain Name resolves to a parked website with sponsored links to third-party websites is evidence of bad faith. A finding of bad faith is also supported by the configuration of MX servers and SPF records which is an indication of possible phishing.

Lastly, the Respondent has been hiding behind a privacy shield. In accordance with section 3.6 of the [WIPO Overview 3.0](#), this supports a finding of bad faith. Upon disclosure of the personal information of the Respondent, the Complainant asserted that the name, address, and contact information of the Respondent appear to be false and, as such, do not represent an existing address.

Finally, although the lack of a formal or substantive response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith, the cumulative circumstances as outlined in the Decision are sufficient for the Panel to find that the registration and use of the Domain Name by the Respondent are in bad faith.

Therefore, the Panel is satisfied that the third element of the Policy is met.

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 <biomorieux.com> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: December 7, 2022