

ADMINISTRATIVE PANEL DECISION

bioMérieux v. Oscar Huerta goodrich
Case No. D2022-4795

1. The Parties

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

The Respondent is Oscar Huerta Goodrich, United States of America (“United States”).

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 14, 2022. On December 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 14, 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 (Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 15, 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 December 19, 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 December 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 10, 2023.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on January 18, 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 bioMérieux, a French multinational biotechnology company founded in 1963, notably active in the field of diagnostic solutions and listed on the NYSE Euronext Paris Stock exchange. The Complainant is present in more than 160 countries, by means of its 43 subsidiaries around the world, and through a large network of distributors.

The Complainant owns trademark registrations all over the world, including the following:

- International Trademark registration for BIOMERIEUX, No. 1392389, registered on October 25, 2017, and
- United States Trademark registration for BIOMERIEUX No. 3906321, registered on January 18, 2011.

The Complainant also owns many domain names including “biomerieux” alone or combined with other elements, such as <biomerieux.com>, registered on May 31, 1996, and <biomerieux.fr>, registered on June 4, 1996. The Complainant mentioned that for more than 10 years many UDRP panels have recognized the well-known status of its BIOMERIEUX trademark.

The disputed domain name was registered on December 8, 2022, and resolves to a parking page.

5. Parties' Contentions

A. Complainant

The Complainant initially argues that the disputed domain name reproduces entirely the trademark BIOMERIEUX, with a single slight modification consisting of the first vowel “e” that has been moved of one “row” so that the “r” and the “e” are reversed.

The Complainant adds that this does not alter the overall perception of the disputed domain name, since the difference between “biomreieux” and BIOMERIEUX is almost unnoticeable and the disputed domain name represents a deliberate misspelling of its trademarks, therefore, a typical case of “typosquatting,” in which the disputed domain name appears extremely close to the Complainant’s trademark.

The Complainant also alleges that the disputed domain name does not correspond to the name of the Respondent, nor to any trademark registered in the name of the Respondent, and that the Complainant has never given its consent for the Respondent to use its trademark.

In addition, the Complainant informs that there is no evidence of any fair or noncommercial or *bona fide* use of the disputed domain name in connection with goods and services because the disputed domain name resolves to a parking page displaying Pay-Per-Click advertisements. Further, the Complainant argues that the nature of the disputed domain name, carries a high risk of implied affiliation with the Complainant, and therefore cannot constitute fair use, as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

According to the Complainant, the Respondent registered and is using the disputed domain name in bad faith since it appears to be located in the United States, where the Complainant holds several trademark registrations and the trademark BIOMERIEUX is a fanciful designation, and not a suggestive term.

Also, the Complainant says that its trademark BIOMERIEUX is extremely well known not only in the medical field, but also before the general public, reason why the Respondent was or at least must have been clearly

aware of the prior rights of the Complainant in the BIOMERIEUX trademarks before registering the disputed domain name.

The Complainant explains that the Respondent has hidden its identity and contact information through a privacy service, which reinforces a finding on the Respondent's bad faith conduct and that when its identity of was revealed by the Registrar, searches conducted disclosed that the Respondent's name and email address are identities already used in previous fraud attempts, and on the other hand, the address and phone number appear to be false or fancy pieces of information put together trying to give the impression of consistency, which adds to the alleged bad faith.

With respect to the use in bad faith, the Complainant mentions that the disputed domain name resolves to a parking page containing sponsored links.

Finally, the Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

As per paragraph 4(a) of the Policy, the Complainant must prove 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The evidence presented in the Complaint demonstrates that the Complainant is the owner of trademark registrations for BIOMERIEUX in many jurisdictions.

The disputed domain name indeed represents a misspelling of the Complainant's trademark BIOMERIEUX with the letters "e" and "r" reversed, which seems visually irrelevant when comparing the Complainant's trademark and the disputed domain name.

Previous UDRP panels have consistently held that a domain name is identical or confusingly similar to a trademark for purposes of the Policy "when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name" (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)).

Therefore, the Panel finds that paragraph 4(a)(i) of the Policy has been proved by the Complainant, *i.e.*, the disputed domain name is confusingly similar to the Complainant's trademarks.

B. Rights or Legitimate Interests

The Respondent has not submitted a response to the Complaint.

There is no evidence that the Respondent has any authorization to use the Complainant's trademark or to register domain names containing the trademark BIOMERIEUX.

There is no evidence that the Respondent is commonly known by the disputed domain name.

There is also no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or that before any notice of the dispute, the Respondent has made use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, the Complainant has provided evidence that the disputed domain name resolves to a parking page displaying Pay-Per-Click advertisements.

The typo in the Complainant's trademark represented in the disputed domain name with the letters "e" and "r" reversed is demonstrative of the Respondent's lack of rights or legitimate interests. Such typo illustrates the Respondent's intent to mislead unsuspecting Internet users, unaware of the typo in the disputed domain name and expecting to find the Complainant.

The Panel finds that the use of the disputed domain name, which incorporates the Complainant's trademark with a typo, does not correspond to a *bona fide* use of the disputed domain name under the Policy.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(ii) of the Policy has been satisfied, *i.e.*, the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The trademark BIOMERIEUX is registered by the Complainant in several jurisdictions and has been used since a long time. Also, the Complainant registered many different domain names consisting of the mark BIOMERIEUX.

This Panel finds that the disputed domain name reproduces/imitates the trademark BIOMERIEUX with an intentional reversal of the letters "e" and "r" to confuse and/or deceive consumers.

The Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant's BIOMERIEUX trademark enjoys reputation and is considered as well known in its segment, having a worldwide visibility. Thus, a domain name that reproduces/imitates such a mark is already suggestive of the registrant's bad faith. Taking into account the evidence in the Complaint, it is not conceivable that the Respondent would not have been aware of the Complainant's trademark rights at the time of the registration of the disputed domain name.

It is clear to the Panel that the Respondent's intention with the misspelling of the Complainant's trademark was to create a likelihood of confusion among Internet users for any commercial gain. This confirms that the disputed domain name was registered and is used in bad faith by the Respondent.

Furthermore, the Respondent used privacy protection when registering the disputed domain name and it has also been involved in other UDRP complaints, which reinforces the bad faith.

Moreover, the Respondent has chosen not to respond to the Complainant's allegations. According to the UDRP panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company*, WIPO Case No. [D2009-0610](#), "[t]he failure of the Respondent to respond to the Complaint further supports an inference of bad faith".

Therefore, this Panel finds that the Respondent has intentionally attempted to cause confusion with the Complainant's trademark by misleading Internet users to believe that the disputed domain name belongs to or is associated with the Complainant.

This Panel finds that the Respondent's attempt of taking undue advantage of the trademark BIOMERIEUX as described in paragraph 4(b)(iv) of the Policy has been demonstrated.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, the disputed domain name has been registered and is being used in bad faith.

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, <biomreieux.net>, be transferred to the Complainant.

/Mario Soerensen Garcia/

Mario Soerensen Garcia

Sole Panelist

Date: February 1, 2023