

ADMINISTRATIVE PANEL DECISION

BioNTech SE v. Dean Purvis, Creative Tinder
Case No. D2022-4892

1. The Parties

The Complainant is BioNTech SE, Germany, represented by MSA IP – Milojevic Sekulic & Associates, Serbia.

The Respondent is Dean Purvis, Creative Tinder, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <comirnatyvax.com> (“Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 20, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 21, 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 (Contact Privacy Inc. Customer 0162412899) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 23, 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 28, 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 January 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on February 16, 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 following facts are undisputed.

The Complainant was founded in 2008 and is a biotechnology company, involved in the development of novel therapies for cancer and other serious diseases. It develops and manufactures active immunotherapies for patient-specific approaches to the treatment of diseases, which include pharmaceutical candidates based on messenger RNA (mRNA) for use, *inter alia*, as individualized cancer immunotherapies and as vaccines against infectious diseases. The Complainant focuses on developing cancer therapeutics, including individualized immunotherapy, as well as vaccines for infectious diseases, including Covid-19 (together with United States pharmaceutical company Pfizer). In cooperation with Pfizer, the Complainant has started "Project Lightspeed" and developed a successful vaccine known in the media as the Pfizer/BioNTech Covid-19 vaccine, which is sold under the brand name COMIRNATY.

The Complainant is the owner of a number of trademark registrations in various jurisdictions worldwide, including the European Union Trade Mark No. 018247442 for COMIRNATY (word mark), registered on October 7, 2020, for goods in class 5 and the United States trademark No. 6312239 for COMIRNATY (word mark), registered on April 6, 2021, for goods in class 5. These trademark registrations will, also in singular, be referred to as the "Trademark".

The Domain Name was registered on August 23, 2021. At the time of filing the Complaint, the Domain Name resolved to a parked page.

5. Parties' Contentions

A. Complainant

To the extent relevant for rendering this decision, the Complainant contends the following:

On a global scale, at the time of filing the Complaint, more than one billion doses of the COMIRNATY vaccine have been administered throughout the world. As a result the Trademark has gained global fame and is well known.

The Domain Name is confusingly similar to the Trademark. The Domain Name incorporates the Complainant's Trademark in combination with the term "vax" and the generic Top-Level Domain ("gTLD") ".com". The "vax" element of the Domain Name represents a dictionary word defined by Cambridge dictionary as being short for vaccine or vaccination and is, therefore, closely related to the Complainant's business activity of vaccine development.

The Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use and register its Trademark or to seek registration of any domain name incorporating the Trademark. Based on all available information, the Respondent did not demonstrate use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. Therefore, it is clear that the Respondent has no intention to develop a legitimate activity through the Domain Name and that the Respondent registered the Domain Name for the purpose of taking unfair advantage of the Complainant's reputation and disrupting its business. The Respondent is neither commonly known by the name "comirnaty" nor in any way affiliated with the Complainant. The Respondent in any event is not authorized or licensed to

use the Trademark, nor to seek registration of any domain name incorporating the Trademark. Furthermore, the Complainant's Trademark is not a common, plain or otherwise descriptive term and as such it has significance only as the Trademark owned by the Complainant.

E-mail servers (MX Records) are configured in respect of the Domain Name. Thus, there is a real possibility that Internet users were receiving emails from the email addresses with extensions "[...].comirnatyvax.com" on the assumption that they were communicating directly with the Complainant or an affiliated entity. In that sense, the Respondent may have used such e-mail addresses to impersonate the Complainant, and Internet users in need of the COMIRNATY Covid-19 vaccine might have been tricked into disclosing their personal data and sensitive information. This all represents a severe risk of phishing activities.

The Domain Name was registered and is being used in bad faith.

It is implausible that the Respondent was unaware of the Complainant and the Trademark when registering the Domain Name, given the notoriety of the Trademark, also resulting from the media attention the vaccine under the Trademark was given throughout the Covid-19 pandemic.

The Domain Name redirects to a parked page with a hosting service provider's information and "coming soon" announcement which indicates that the Registrant has registered and is using the Domain Name with the intention to prevent the Complainant from registering the Domain Name that consists of its Trademark in addition to the term "vax". In any event, such passive holding of the Domain Name by using it to resolve to a parked page amounts to bad faith registration and use, as established by previous panels. Also the configuration of e-mail servers amounts to bad faith use.

On November 24, 2022, the Complainant sent a takedown notice to the hosting and mail service provider in order to obtain takedown of mail servers attached to the Domain Name, but no response to this request has been provided, despite numerous reminders.

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 a 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 Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Domain Name must be shown to be identical or confusingly similar to that mark.

The Complainant has shown that it has rights in the Trademark, that also predates the registration of the Domain Name.

The Panel finds the Domain Name confusingly similar to the Trademark. The Trademark is clearly recognizable in the Domain Name. The addition of the element "vax" does not prevent a finding of confusing similarity between the Trademark and the Domain Name.

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

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 interest 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 may 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 acquired 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.

In absence of a Response, the Respondent has not presented any evidence of any rights or legitimate interests it may have in regard to the Domain Name. There is also no evidence that the Respondent has applied for or obtained any trademark rights related to “comirnaty” or that it is commonly known by the Domain Name.

The Respondent does not seem to make any use of the Domain Name as the Domain Name does not resolve to any active website. Consequently, the Panel considers that the Respondent is not making use in connection with a *bona fide* offering of goods or services or for noncommercial or fair use purposes.

Moreover, the Panel finds that the Domain Name is inherently misleading. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

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.

The Panel finds that the Trademark is famous throughout the world, resulting from the global Covid-19 pandemic, which is also supported by the evidence filed by the Complainant.

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 at the time the Respondent registered the Domain Name.

The Complainant has established that there is also use in bad faith of the Domain Name, by bringing forward several circumstances.

Lacking any plausible reason for the Respondent for using the inherently misleading Domain Name which includes the Trademark and the term “vax”, the Panel finds that, on a balance, the Respondent is also using the Domain Name in bad faith, which is also supported by the following circumstances.

The Domain Name does not resolve to an active website. According to section 3.3 of the [WIPO Overview 3.0](#) the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding.

Furthermore, the Respondent's has configured e-mail servers, which poses a phishing risk.

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 <comirnatyvax.com> be transferred to the Complainant.

/Willem J. H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: March 2, 2023