

ADMINISTRATIVE PANEL DECISION

BioNTech SE v. Benjamin Glubka, Benjamin Glubka
Case No. D2022-4915

1. The Parties

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

The Respondent is Benjamin Glubka, Benjamin Glubka, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <comirnarty.com> is registered with Domain.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 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 and contact information in the Complaint (Domain Privacy Service FBO Registrant.). The Center sent an email communication to the Complainant on December 27, 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, naming Mr. Glubka as a Respondent, 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 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 27, 2023.

The Center appointed Warwick Smith as the sole panelist in this matter on February 9, 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 a German biotechnology company, founded in 2008. It develops therapies for cancer and other serious diseases, including patient-specific immunotherapies and vaccines for infectious diseases. In recent years, it has worked with the United States pharmaceutical company Pfizer in developing a widely used vaccine for Covid-19 (“the vaccine”).

The vaccine (known in the media as the Pfizer / BioNTech Covid-19 vaccine), is now sold in 149 countries around the world, under the brand name “Comirnaty”. As at December 7, 2022, more than 400 million doses of the vaccine had been administered in the United States alone. The corresponding figure for the European Union to that date, was in excess of USD 600 million.

“Comirnaty” is an expression the Complainant coined, apparently at some time in early – mid 2020. It was developed as a distinctive sign that combined elements of the expressions “community”, “immunity”, “Covid-19”, and “mRNA”. According to the amended Complaint, the expression is distinctive of the vaccine – it is not a dictionary word.

The Complainant registered the word mark COMIRNATY in Germany and in the United Kingdom in the course of 2020, and it registered that mark internationally on June 23, 2020. United States and European Union registrations followed, both on April 6, 2021.

As the Respondent is apparently resident in the United States, the registration in that country is the most significant for the purposes of this decision. The Complainant is the registered proprietor of the word mark COMIRNATY in the United States, in International Class 5, under registration number 6312239. The registration covers “vaccines for human use”.

The Complainant says that its COMIRNATY mark has become widely known around the world. In support of that claim, it produced copies of news media articles from a variety of countries, which referred to the vaccine by reference to the COMIRNATY mark. One such article, published in the Washington Post on August 23, 2021, focused primarily on the selection of the name “Comirnaty”. The Complainant also pointed to the fact that, since the first emergency market authorizations were given for the vaccine in December 2020, searches on the expression “Comirnaty” have significantly increased.

Between them, the Complainant and its development partner Pfizer are the proprietors of a number of “comirnaty” domain names. The Complainant is the registrant of the domain names <comirnaty.eu> and <comirnatyglobal.com>, while Pfizer is the registrant of the domain names <comirnaty.com>, <comirnaty.org>, and <comirnaty.net>. The domain name <comirnaty.com> was registered by Pfizer on May 28, 2020.

The disputed domain name was registered on August 23, 2021. As at December 21, 2022, it resolved to a parking page, with a heading “This site is under development”. A screenshot of the parking page, which was produced by the Complainant, contained what appear to be Pay-Per-Click (“PPC”) links to other websites, under the following click-on headings: “Cold and Flu Prevention”, “Symptoms of Influenza”, and “Influenza causes”. The Complainant says that the disputed domain name has also been linked to an email server, although there is no evidence that it has actually been used for sending emails.

The Complainant contacted the Registrar on November 24, 2022, asking the Registrar to take down any mail servers at the disputed domain name. The Complainant expressed concern at the possibility that any emails sent from an email server at the disputed domain name would likely trick recipients into believing that the emails had come from the Complainant, enabling the Respondent to obtain the recipients’ personal details (or otherwise use the emails for phishing purposes). On November 25, 2022, the Registrar declined to take

the action sought, saying that it could see no evidence of a fraudulent scheme. The Registrar said that no website or mail accounts had been created.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is confusingly similar to its COMIRNATY mark. The disputed domain name is almost identical to that mark, the only differences being the additional "r" added before the "t" in the Complainant's mark, and the generic Top-Level Domain ("gTLD") (which is not taken into account when considering confusing similarity under paragraph 4(a)(i) of the Policy). Moreover, the letters "r" and "t" are next to each other on the standard QWERTY keyboard, making it more likely that any Internet user looking for the website of the owner of the vaccine will mistakenly key in the disputed domain name. In registering the disputed domain name, the Respondent has clearly engaged in the bad faith practice commonly known as typosquatting.

The Complainant next contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with the Complainant in any way, and has not been authorized to use its COMIRNATY mark, or to seek registration of any domain name incorporating that mark.

The Respondent has not used the disputed domain name in connection with any *bona fide* offering of goods or services, and there is no evidence that he has made demonstrable preparations for any such use. The website to which the disputed domain name has resolved consists of nothing more than a parking page, with PPC links which are designed to capitalize on the Complainant's reputation and goodwill in its COMIRNATY mark. Previous UDRP decisions have consistently held that such use of a disputed domain name does not constitute a *bona fide* use under the Policy.

There is nothing to suggest that the Respondent is commonly known by the disputed domain name, and the Respondent's use of the disputed domain name has been neither noncommercial nor fair. It is important also that "Comirnaty" is an invented word. Previous UDRP panels have consistently held that use of an invented word which is registered as a trade mark (particularly in the pharma and biotechnology fields) in a domain name would lead to a finding of "no rights or legitimate interests".

In addition to the foregoing concerns, the fact that there are email servers attached to the disputed domain name is a further indicator of the Respondent's lack of *bona fides*. The mere existence of such servers presents a severe risk that the Respondent's will engage in phishing activities, and the likelihood that he actually had that intention is enhanced by the fact that he used a privacy shield when he registered the disputed domain name.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. Any suggestion that the Respondent was unaware of the Complainant's COMIRNATY mark when he registered the disputed domain name is implausible, and it is difficult to imagine that he did not have the Complainant in mind when he effected the registration. The facts that (i) the disputed domain name is virtually identical to a mark consisting entirely of an invented word, and (ii) the Respondent has no connection with the Complainant, are also suggestive of opportunistic bad faith in the registration of the disputed domain name.

The Respondent has also been using the disputed domain name in bad faith. It is difficult to imagine any good faith use to which the Respondent might have put the disputed domain name, and the landing page with PPC links confirms that the disputed domain name has been used to attract, for commercial gain, Internet users to the landing page by creating a likelihood of confusion with the Complainant's COMIRNATY mark. The existence of email servers attached to the disputed domain name provides further evidence that the Respondent's registration and use of the disputed domain name have been in bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a Complainant is required to establish each of the following –

- (i) the domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (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 proved this part of the amended Complaint.

The Complainant is the registered proprietor of the mark COMIRNATY, in the United States, and in a number of other jurisdictions. That is sufficient for it to establish “rights” in that mark for the purposes of paragraph 4(a)(i) of the Policy.

The disputed domain name differs from the Complainant's COMIRNATY mark only by the addition of another “r” before the letter “t” where that letter appears in the mark. As “Comirnaty” is an invented expression, and the Respondent has claimed no right or interest in that expression, there has clearly been an intentional misspelling of the Complainant's COMIRNATY mark in the disputed domain name. UDRP panels have consistently regarded such disputed domain names as confusingly similar to the complainant's mark for the purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) states at section 1.9:

“A domain name which consists of a common, obvious or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purposes of the first element. . . .”

In this case, the misspelling is obvious. The visual similarity between the disputed domain name and the COMIRNATY mark is very close.

For completeness, the Panel notes that the gTLD “.com” is not normally taken into account in the comparison that is required by paragraph 4(a)(i) of the Policy. The gTLD is a technical requirement of registration, and is not normally considered to have legal significance in applying paragraph 4(a)(i).¹

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy set out a number of circumstances which, without limitation, may be effective for a respondent to demonstrate that it has rights to, or legitimate interests in, a domain name for the purposes of paragraph 4(a)(ii) of the Policy. The circumstances are –

- (i) Before any notice to [the respondent] of the dispute, use by [the respondent] 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; or

¹ [WIPO Overview 3.0](#), section 1.11.

- (ii) Where [the respondent] (as an individual business or other organization) [has] been commonly known by the disputed domain name, even if [the respondent has] acquired no trade mark or service mark rights; or
- (iii) Where [the respondent is] making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly direct consumers or to tarnish the trade mark or service mark at issue.

[WIPO Overview 3.0](#) states the following on the burden of proof under paragraph 4(a)(ii) of the Policy:

“While the overall burden of proof in UDRP proceedings is on the Complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the [often impossible] task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

In this case, the disputed domain name is confusingly similar to the Complainant’s COMIRNATY mark, which the Panel accepts was well-known around the world when the disputed domain name was registered. The Respondent has not been licensed or otherwise authorized to use the Complainant’s COMIRNATY mark, or any confusingly similar expression.

There is no evidence that the disputed domain name has been used in connection with any *bona fide* offering of goods or services, or that the Respondent has made any demonstrable preparations to put the disputed domain name to any such use. The only proved use of the disputed domain name has been use as a landing page, with PPC links to third party websites. UDRP panels have consistently held that such use, without more, does not provide a basis for a claim to rights or legitimate interests under paragraph 4(c)(i) of the Policy, at least where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark, or otherwise mislead Internet users.² In this case, the disputed domain name is nearly identical to the Complainant’s COMIRNATY mark, and the links on the website at the disputed domain name appear to be broadly within with the Complainant’s field of business activity (therapies for infectious diseases). The COMIRNATY mark is an invented expression, and no reason has been offered for the Respondent’s choice of the disputed domain name. In those circumstances, the high likelihood is that the Respondent *did* intend to capitalize on the Complainant’s reputation and goodwill in its mark, or otherwise mislead Internet users.³ In the foregoing circumstances, there could be no basis for a claim to a right or legitimate interest under paragraph 4(c)(i) of the Policy.

Nor is there anything to suggest that the Respondent has been commonly known by the disputed domain name. There appears to be no basis for a claim to a right or legitimate interest under paragraph 4 (c) (ii) of the Policy.

Finally, there is no evidence that the Respondent has made any legitimate noncommercial or fair use of the disputed domain name, such as might have supported a claim to a right or legitimate interest under paragraph 4 (c) (iii) of the Policy. The use as a landing page with PPC links can not be described as a noncommercial use, and nor has it been a “fair” use. Indeed, the use in this case *does* appear to have been use, with intent for commercial gain, to misleadingly direct Internet users (to the third party websites).

² [WIPO Overview 3.0](#), section 2.9.

³ Even if the third party links were generated automatically by the Registrar, or by some other third party, that would not avail the Respondent. UDRP panels have consistently held that a respondent cannot disclaim responsibility for such content appearing on its website ([WIPO Overview 3.0](#), section 3.5).

Those matters in combination are sufficient to establish a *prima facie* case under paragraph 4(a)(ii) of the Policy. The evidential burden of showing rights or legitimate interests in respect of the disputed domain name therefore moves to the Respondent. In the absence of any Response, the Respondent has failed to discharge that evidential burden, and the Complainant's *prima facie* proof must prevail. The Complainant has made out its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, the following circumstances, without limitation, are deemed (if found by the Panel to be present) to be evidence of the registration and use of a domain name in bad faith –

- (i) Circumstances indicating that the holder has registered or has 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 trade mark or service mark or to a competitor of that complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) The holder has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the holder has engaged in a pattern of such conduct; or
- (iii) The holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's 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 the holder's website or location or of a product or service on the holder's website or location.

The Complainant has also sufficiently proved this part of the amended Complaint.

The Panel is satisfied that the Respondent must have been aware of the Complainant's COMIRNATY mark when he registered the disputed domain name. "Comirnaty" is an invented word, and it is highly improbable that the Respondent would have come up with a domain name so close to that word if he was not already aware of the Complainant's COMIRNATY mark. Consistent with that inference, the vaccine marketed under the COMIRNATY mark had attracted an enormous amount of publicity all around the world by the time the disputed domain name was registered, the <comirnaty.com> domain name had been registered (by Pfizer) as early as May 28, 2020, and the Complainant had registered the COMIRNATY trade mark in the United States over four months before the disputed domain name was registered. In the absence of any Response, and noting the abovementioned circumstances, the Panel considers it more likely than not that the Respondent would have been aware of the Complainant's COMIRNATY mark, and would have registered the disputed domain name due to its similarity with the Complainant's COMIRNATY mark.

In the absence of any Response, the Panel concludes that the disputed domain name was almost certainly registered by the Respondent in bad faith. It is difficult to imagine any *bona fide* use the Respondent might have made of the disputed domain name given (i) its near-identity to the Complainant's COMIRNATY mark, and (ii) the substantial reputation of that mark around the world. On seeing the disputed domain name, many Internet users who were aware of the COMIRNATY vaccine would mistakenly assume that any website at the disputed domain name would be a website owned or endorsed by the manufacturers or authorized distributors of the vaccine.

The Respondent's actual use of the disputed domain name confirms that no *bona fide* use was intended. Internet users who visited the Respondent's website looking for information about the COMIRNATY vaccine would not find any such information. They would only find PPC links to third party websites, intended as a source of revenue for the Respondent (or for others with his agreement).

The Panel is satisfied that the circumstances fall squarely within the example of bad faith registration and use set out at paragraph 4 (b) (iv) of the Policy. By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website at the disputed domain name, by creating a likelihood of confusion with the Complainant's COMIRNATY mark as to the source, sponsorship, affiliation or endorsement of the website at the disputed domain name (or the third party websites for which the click-on links are provided).

Those considerations are sufficient for the Panel to conclude that the Complainant has made out its case of bad faith registration and use. It is accordingly unnecessary to make any findings on the Complainant's other arguments, including its argument based on the alleged attachment of email servers and the possibility that the Respondent may have been intending to embark on phishing activities.

The Complainant having made out its case on all of the elements in paragraph 4(a) of the Policy, there will be an order transferring the disputed domain name to the Complainant.

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, <comirnarty.com> be transferred to the Complainant.

/Warwick Smith/

Warwick Smith

Sole Panelist

Date: February 23, 2023.