

ADMINISTRATIVE PANEL DECISION

bioMérieux v. Domain Admin, Media Matrix LLC

Case No. D2023-0847

1. The Parties

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

The Respondent is Domain Admin, Media Matrix LLC, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <ecatalogue-biomerieux.com> is registered with Network Solutions, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 24, 2023. On February 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 25, 2023, 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 (PERFECT PRIVACY, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 1, 2023, 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 March 3, 2023.

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 March 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 27, 2023.

The Center appointed Fabrizio Bedarida as the sole panelist in this matter on April 4, 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, bioMérieux, a French multinational biotechnology company listed on the NYSE Euronext Paris Stock exchange, is a global leader in microbiology providing diagnostic solutions for determining the source of disease and contamination to improve patient health and ensure consumer safety.

The company was founded in 1963, serves more than 160 countries through its 43 subsidiaries around the world, and avails of a large network of distributors. It is one of the leading companies in the field of in vitro diagnostics, with over 55 years of experience and with EUR 3.376 billion in sales.

The strength and renown of the Complainant's BIOMERIEUX trademark has already been recognized by previous UDRP panels.

The Complainant has proven to be the owner of the BIOMERIEUX trademarks, which enjoy protection through numerous registrations worldwide.

The Complainant is, *inter alia*, the owner of:

- International trademark BIOMÉRIEUX (device) No. 912430, registered on January 3, 2007, covering goods in international classes 1, 5, 9, and 10;
- International trademark BIOMERIEUX No. 933598, registered on June 12, 2007, covering goods in international classes 1, 5, 9, and 10; and
- United States trademark BIOMERIEUX No. 3906321, registered on January 18, 2011.

In addition, the Complainant (and/or its subsidiaries) is also the owner of numerous domain names including the sign "biomerieux" alone or combined with other elements, such as:

<biomerieux.com> registered on May 31, 1996; <biomerieux.net> registered on October 20, 2000; <biomerieux.org> registered on October 20, 2000; and <biomerieuxusa.com> registered on April 4, 2001.

The disputed domain name was registered on September 10, 2017.

The disputed domain name resolves to a pay-per-click ("PPC") page containing commercial links, some of which redirect to websites offering goods and/or services which compete with those offered by the Complainant.

The Complainant's trademark registrations predate the registration of the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to the Complainant's registered trademarks; that the Respondent has no rights or legitimate interests whatsoever with respect to the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to obtain a transfer of the disputed domain name, paragraphs 4(a)(i) - (iii) of the Policy require that the Complainant must demonstrate to the Panel that:

- (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 has established rights in the BIOMERIEUX trademark.

The disputed domain name contains the Complainant's BIOMERIEUX trademark in its entirety with the addition of the term "ecatalogue" and the generic Top-Level Domain ("gTLD") ".com". The addition in the disputed domain name of these elements does not prevent a finding of confusing similarity, being the BIOMERIEUX trademark recognizable in the disputed domain name. Pursuant to section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") which states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Therefore, the Panel finds the disputed domain name to be confusingly similar to the BIOMERIEUX trademark in which the Complainant has rights.

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

B. Rights or Legitimate Interests

This Panel finds that the Complainant has made a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent does not appear to be commonly known by the name "biomerieux" or by any similar name. The Respondent has no connection or affiliation with the Complainant, and the Complainant has not licensed or otherwise authorized the Respondent to use or register any domain name incorporating the Complainant's trademarks. The Respondent does not appear to make any legitimate noncommercial or fair use of the disputed domain name, nor any use in connection with a *bona fide* offering of goods or services. In fact, it appears from the document available, that the disputed domain name resolves to a PPC page containing commercial links relating to, *inter alia*, microbiology activities, which is the Complainant's area of business.

Finally, the Respondent has not replied to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel, on the basis of the evidence presented, accepts and agrees with the Complainant's contentions that the disputed domain name was registered and has been used in bad faith.

The BIOMERIEUX trademark is inherently distinctive. It is a fanciful designation and does not constitute an existing word in any dictionaries, nor does it even constitute a suggestive term.

The BIOMERIEUX trademark has been registered and used for several decades all over the world, it enjoys a widespread reputation and high degree of recognition as a result of its fame and renown and thus the BIOMERIEUX mark is not one that traders could legitimately adopt other than for the purpose of creating the impression of an association with the Complainant.

Consequently, the Panel finds that the Respondent knew of the Complainant's marks and intentionally intended to create an association with the Complainant and its business at the time of registration of the disputed domain name.

Further inference of bad faith registration and use of the disputed domain name is given by the fact that the Respondent has not denied the assertions of bad faith made by the Complainant in this proceeding, so it is therefore reasonable to assume that if the Respondent had legitimate purposes for registering and using the disputed domain name, it would have responded to these assertions.

In addition, the Panel finds that the Respondent's use of the disputed domain name qualifies as bad faith registration and use under the Policy.

Further inference of bad faith registration in the circumstances of the present case is given by the fact that the Respondent has hidden its identity and contact information through a privacy service.

Finally, mail exchange ("MX") records have been set up on the disputed domain name. As already noted by previous UDRP panels, the use of MX records, showing that the respondent may use the domain name actively in the future for email correspondence, together with the well-established reputation of the complainant's trademarks, which is reproduced in its entirety along with the term "ecatalogue", is considered to further support a finding of bad faith.

Accordingly, the Panel finds, on the basis of the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith.

Therefore, the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

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 <ecatalogue-biomerieux.com> be transferred to the Complainant.

/Fabrizio Bedarida/

Fabrizio Bedarida

Sole Panelist

Date: April 13, 2023