

ADMINISTRATIVE PANEL DECISION

NAOS v. nguyen van tu
Case No. D2023-1831

1. The Parties

The Complainant is NAOS, France, represented by Nameshield, France.

The Respondent is nguyen van tu, Viet Nam.

2. The Domain Name and Registrar

The disputed domain name <biodermavietnam.click> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on April 25, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 26, 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 (GMO-Z.com RUNSYSTEM JSC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 26, 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 in English on April 27, 2023.

On April 26, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On April 27, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Japanese of the Complaint, and the proceedings commenced on May 3, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was May 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 24, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on June 15, 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

Whereas the Respondent has not submitted any formal response, the following information from the Complaint is found to be the factual background of this case.

The Complainant, founded in France more than 40 years ago, is doing business in skincare industry, selling its products under the brand BIODERMA in over 130 countries.

The Complainant owns a large portfolio of BIODERMA trademarks such as follows:

- International Registration No. 267207 for BIODERMA, registered on March 19, 1963;
- International Registration No. 510524 for BIODERMA, registered on March 9, 1987;
- International Registration No. 678846 for BIODERMA, registered on August 13, 1997, designating among others Viet Nam.

Furthermore, the Complainant owns multiple domain names consisting the word "bioderma," such as <bioderma.com>, registered on September 25, 1997, which is used for its official website.

The disputed domain name was registered on April 13, 2023, and redirects to a website displaying the Complainant's BIODERMA trademark and logo, and allegedly selling BIODERMA branded products.

5. Parties' Contentions

A. Complainant

The Complainant' contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its trademark, since the disputed domain name incorporates the entirety of the Complainant's BIODERMA trademark. And, according to the well-established authority, the addition of the geographic term "vietnam" and the generic Top-Level Domain ("gTLD"), "click," should be disregarded in assessing the confusing similarity.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to prior UDRP decisions, it should be sufficient that the Complainant shows *prima facie* that the Respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of demonstrating rights or legitimate interests in the disputed domain name to the Respondent. The Complainant confirms that the Respondent is not related in any way with the Complainant, and the Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant also confirms that it does not license nor grant authorization to the Respondent to make any use of the Complainant's BIODERMA trademark. The Complainant asserts that the Respondent not identified as the disputed domain name and that the Respondent has ever established a right or legitimate interest in the disputed domain name. In addition, the use of the disputed domain name in this case constitutes neither a *bona fide* offering of products or services nor a legitimate noncommercial or fair use.

Third, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. Given the distinctiveness of the Complainant's BIODERMA trademark and its reputation, it should be reasonable to consider that the Respondent registered the disputed domain name with full knowledge of the Complainant's BIODERMA trademark. And, considering that the content of the website, to which the disputed domain name resolves, gives the impression that it originates from the Complainant, because of display of BIODERMA sign on the website. Therefore, it should be considered that the disputed domain name is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

In respect of the language to be used in the administrative proceeding, in accordance with the Rules, paragraph 11(a), the language of the administrative proceeding shall be, in principle, the language of the registration agreement. However, the same provision allows the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In the present case, the Registrar has confirmed that the language of the Registration Agreement is Japanese.

However, the Panel determines that the language of this proceeding shall be English rather than Japanese on the following grounds:

- the Complaint has been submitted in English;
- the Respondent did not reply to the Center's Language of Proceedings email or Notification of Complaint email that have been sent in English and Japanese;
- the disputed domain name is not in Japanese script; and
- the use of Japanese language would cause undue burden and extra costs on the Complainant in consideration of the absence of an objection regarding the language of the proceeding being English from the Respondent or a Response from the Respondent.

6.2. Substantive Matters

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (i) The disputed domain name is identical or confusingly similar to a trade mark 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 Panel finds that the Complainant has rights in the BIODERMA trademark in many jurisdictions.

The disputed domain name includes the term “bioderma”, which is the same as the Complainant’s BIODERMA trademark. The Panel determines that such inclusion in this case is enough to have the disputed domain name to be confusingly similar to the Complainant’s trademark. Where the Complainant’s trademark is recognizable within the disputed domain name, the addition of the geographic term “vietnam” do not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

The generic Top-Level Domain (“gTLD”), “.click” in this case, is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See 1.11.1 of the [WIPO Overview 3.0](#).

The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence showing that the Respondent is commonly known by the name “biodermavietnam”. The Panel notes that the Respondent is not affiliated with the Complainant or authorized or licensed to use the Complainant’s BIODERMA trademark. Moreover, the Panel finds no evidence showing that the Respondent has any rights or legitimate interests in the disputed domain name.

Since the Respondent did not reply to the Complainant’s contentions in this proceeding, the Panel finds on the available record that the Complainant has established an unrebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. See section 2.1 of the [WIPO Overview 3.0](#).

Moreover, the composition of the disputed domain name, which incorporates the Complainant’s trademark together with a geographic term, carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

In consideration of the uniqueness of the term “bioderma”, the size of the Complainant’s business around the world, the purported BIODERMA branded products sold on the website at the disputed domain name, which also includes a reference to the Complainant’s official website at the domain name <bioderma.com>, the Panel finds that the Respondent knew of the Complainant’s BIODERMA trademark at the time of registration of the disputed domain name. Therefore, it is found that the Respondent registered the disputed domain name in bad faith.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, the Panel notes that the disputed domain name resolves to a website, displaying the Complainant’s BIODERMA trademark, and purportedly offering for sale the BIODERMA branded products. It seems natural to consider that the Respondent attempts to impersonate the Complainant and mislead consumers into thinking that the products on the website originate from the Complainant. The Panel finds the Respondent’s use of the disputed domain name is being done in bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds that the disputed domain name has been registered in bad faith and is also being used in bad faith.

The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

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 <biodermavietnam.click> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: June 29, 2023