

ADMINISTRATIVE PANEL DECISION

bioMérieux v. karim kazan

Case No. D2023-2335

1. The Parties

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

The Respondent is karim kazan, United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 30, 2023. On May 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 31, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 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 June 2, 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 June 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 4, 2023.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on July 10, 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 French multinational biotechnology company (notably active in the field of diagnostic solutions) listed on the NYSE Euronext Paris Stock exchange. Its products are mainly used for diagnosing infectious diseases.

The Complainant has been founded in 1963, serves more than 160 countries, by means of its 43 subsidiaries around the world, and through a large network of distributors. Its leadership in the field of in vitro diagnostics lasts for over 55 years, with EUR 3.376 billion in sales.

The Complainant owns exclusive rights to the BIOMERIEUX trademark worldwide registrations around the world and through ongoing use, including, but not limited to, the following:

- International Trademark BIOMERIEUX Registration No. 933598 registered on June 12, 2007 and covering goods in classes 1, 5, 9 and 10;
- European Union Trade Mark BIOMERIEUX Registration No. 17912668 registered on October 20, 2018 and covering goods in classes 5, 9, 10, 35, 37, 41, 42 and 44; and
- United States Trademark BIOMERIEUX Registration No. 3906321 registered on January 18, 2011 and covering goods in classes 1, 5, 9 and 10.

The Complainant is the owner, among others, also of a domain name <biomerieux.com> which registered on May 31, 1996.

The disputed domain name <boimeriuex.com> was registered on May 29, 2023 and resolves to a parking page exclusively displaying sponsored links. The disputed domain name has also been used for a fraudulent email scam.

5. Parties' Contentions

A. Complainant

The Complainant argues that in the disputed domain name <boimeriuex.com>, the BIOMERIEUX trademark is misspelled.

The Complainant argues that the disputed domain name is confusingly similar to its well-known BIOMERIEUX trademark as the spelling mistake with the inversion of the letters "io" in the first syllable and of the letters "eu" in the last syllable do not change the optics of "biomerieux", which is highly distinctive as it is an invented word used exclusively by the Complainant.

The Complainant demonstrates that the Respondent used the disputed domain name to fraudulently impersonate the Complainant in order to try to conduct a customer of the Complainant to proceed to payments (for a value of several hundreds of thousands of Euros) on an alleged bank account of the Complainant, whereas said account is actually controlled by the Respondent.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name to advance legitimate interests. The Complainant has never licensed or otherwise permitted the Respondent to use its trademark or to register any domain name including its trademark.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith, within the meaning of paragraph 4(b)(iv) of the Policy.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed 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; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel seems applicable.

A. Identical or Confusingly Similar

In the present case, the disputed domain name <boimeriuex.com> is confusingly similar to the Complainant's registered trademark BIOMERIEUX.

The Complainant has shown its own trademark rights in the BIOMERIEUX trademark.

The Panel notes that misspellings, such as inversion of a letter do not prevent a domain name from being confusingly similar to a complainant's trademark pursuant to the Policy. As such, the inversion of the letters "io" in the first syllable and of the letters "eu" in the last syllable in the Complainant's trademark do not prevent a finding of confusing similarity in this case. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9.

Accordingly, the Panel finds that the Complainant has satisfied the first requirement that the disputed domain name is confusingly similar to the Complainant's registered trademark, under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant must demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

There is nothing in the available case file to suggest that the Respondent is in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use its trademarks, or to seek registration of any domain name incorporating its trademarks. Therefore, the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not made any submissions or any demonstrations that it has rights or legitimate interests in the disputed domain name.

Past UDRP panels have found that in the absence of any license or permission from the Complainant to use any of its trademarks or to apply for or use any domain name incorporating those trademarks, it is clear that no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be claimed by the Respondent.

The Panel finds no evidence that the Respondent has used or undertaken any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering goods or services.

Likewise, no evidence has been adduced that the Respondent has been commonly known by the disputed domain name; nor, for the reasons mentioned above, is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Panel concludes, noting that the Respondent lacks any rights or legitimate interests in the disputed domain name, that the second element of the Policy has, therefore, been met.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, the Complainant must show that the Respondent registered and is using the disputed domain name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

The Panel considers that the disputed domain name is a misspelling of the Complainant's BIOMERIEUX trademark, differing from it only by inversion of the letters "io" in the first syllable and of the letters "eu" in the last syllable. It is well settled that the practice of typo-squatting constitutes obvious evidence of the bad faith registration of a domain name. See *Lexar Media, Inc. v. Michael Huang*, WIPO Case No. [D2004-1039](#) ("Typosquatting has been held under the Policy to be evidence of bad faith registration of a domain name"); and *Wal-Mart Stores, Inc. v. Longo*, WIPO Case No. [D2004-0816](#) ("[typosquatting] is presumptive of registration in bad faith").

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity, as is the case here, can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

The disputed domain name has been intentionally registered as a common typographical version and it appears confusingly similar to the BIOMERIEUX trademark.

Moreover, the Respondent registered and then used the disputed domain name to perpetrate an email scam or phishing scheme.

The Complainant asserted and provided evidence that the Respondent used the disputed domain name in connection with email addresses in order to impersonate the Complainant and fraudulently induce the Complainant's clients to make a payment to an account that was not the Complainant's account.

The Respondent has not contested the Complainant's allegations.

The Respondent's use of the disputed domain name as part of an email address to send out a fraudulent email to one of the Complainant's clients also falls under the concept of use of a domain name in bad faith pursuant to 4(b) of the Policy.

It has been long established under the UDRP that the concept of use is not confined to the use of a domain name in connection with website content displayed at a disputed domain name. See, for example, *B & H Foto & Electronics Corp. v. Whois Privacy Protection Service, Inc. / Jackie Upton*, WIPO Case No. [D2010-0841](#).

Such use of a domain name, although not one of the non-exhaustive examples of bad faith registration and use of a domain name set out in paragraph 4(b) of the Policy, clearly falls under the concept of use of a domain name in bad faith.

The use of a confusingly similar, deceptive domain name for an email scam has previously been found by UDRP panels to be sufficient to establish that a domain name has been registered and is being used in bad faith. See [WIPO Overview 3.0](#), section 3.4.

The Panel therefore accepts these allegations as undisputed facts and concludes that the Respondent registered and was using the disputed domain name in bad faith.

For these reasons, the Panel holds that the Complainant has met its burden of showing that the Respondent registered and is using the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy. The third element of the Policy has, therefore, been 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 disputed domain name, <boimeriux.com>, be transferred to the Complainant.

/Eva Fiammenghi/

Eva Fiammenghi

Sole Panelist

Date: July 24, 2023