

ADMINISTRATIVE PANEL DECISION

BioNTech SE v. Rick Hoopes
Case No. D2023-3545

1. The Parties

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

Respondent is Rick Hoopes, United States of America.

2. The Domain Name and Registrar

The disputed domain name <biontech.bio> (“the Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2023. On August 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 22, 2023, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on August 23, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 23, 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 Respondent of the Complaint, and the proceedings commenced on August 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 20, 2023. On September 21, 2023, the Respondent sent an informal communication by email to the Center.

The Center appointed Marina Perraki as the sole panelist in this matter on September 26, 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

Complainant is a next generation biotechnology company which develops and manufactures active immunotherapies for patient-specific approaches to the treatment of diseases, which include pharmaceutical candidates based on messenger RNA (mRNA). Complainant is one of a few companies which have developed a vaccine to induce immunity and prevent COVID-19 infections. In cooperation with Pfizer, Complainant developed a vaccine known as the Pfizer/BioNTech Covid-19 vaccine.

Complainant owns trademark registrations BIONTECH, including:

- the European Union trademark registration No. 008964447 BIONTECH (word), filed on March 18, 2010 and registered on December 22, 2010 for goods and services in international classes 1, 5, 42, and 44;
- the international trademark registration No. 1370266 BIONTECH (word), registered on July 10, 2017 for goods and services in international classes 1, 5, 16, 31, 42, and 44; and
- the international trademark registration No. 1478253 BIONTECH (figurative) registered on April 5, 2019 for goods and services in international classes 1, 5, 42 and 44.

Complainant also owns domain name registrations for BIONTECH including the domain name <biontech.com> registered on May 29, 1998.

The Domain Name was registered on June 25, 2023, and leads to an inactive website while, as Complainant demonstrated, email servers have been configured.

5. Parties' Contentions

A. Complainant

Complainant asserts that it has established all three elements required under paragraph 4(a) of the Policy for the transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements, which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) 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

Complainant has demonstrated rights through registration and use on the BIONTECH trademark.

The Panel finds that the Domain Name is identical to the BIONTECH trademark.

The generic Top-Level Domain (“gTLD”) “.bio” is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons only (*Rexel Developments SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#)).

Complainant has established Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent’s use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) Respondent is making a 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 Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Name. As per Complainant, Respondent was not authorized to register the Domain Name.

Respondent has not demonstrated any preparations to use, or has not used the Domain Name or a trademark corresponding to the Domain Name in connection with a *bona fide* offering of goods or services.

On the contrary, the Domain Name leads to an inactive website. Furthermore, as Complainant has demonstrated, an email server has been configured on the Domain Name. This indicates the intention of Respondent to potentially use the Domain Name for purposes other than hosting a website, including potentially for constructing an email composition containing the Domain Name, to be used for deceiving purposes (*Accor SA v. Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org / Yogesh Bhardwaj*, WIPO Case No. [D2017-1225](#)).

Furthermore, there is no evidence on record giving rise to any rights or legitimate interests in the Domain Names on the part of Respondent within the meaning of paragraphs 4(c)(ii) and 4(c)(iii) of the Policy.

In addition, the nature of the Domain Name, being identical to Complainant’s trademark, carries a high risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

Complainant has established Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, “in particular but without limitation”, are evidence of the registration and use of the Domain Name in bad faith:

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product or service on Respondent’s website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. Complainant’s BIONTECH mark had been widely used and registered before the time of the Domain Name registration by Respondent and enjoyed reputation, as repeatedly recognized (*e.g.*, *BioNTech SE v. Lei Wang*, WIPO Case No. [DME2023-0006](#)). Therefore, noting also the composition of the Domain Name, the Panel finds it more likely than not that Respondent had Complainant’s mark in mind when registering the Domain Name (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#)).

Respondent knew or should have known about Complainant’s rights, noting also that such knowledge is readily obtainable through a simple browser search (*Caesars World, Inc. v. Forum LLC*, WIPO Case No. [D2005-0517](#); *Compart AG v. Compart.com / Vertical Axis, Inc.*, WIPO Case No. [D2009-0462](#)).

As regards bad faith use, Complainant demonstrated that the Domain Name leads to an inactive website and there is a risk that it be used for purposes other than to host a website. This is supported by the fact that, as per Complainant, an email server has been configured on the Domain Name. The non-use of a domain name would not prevent a finding of bad faith (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); [WIPO Overview 3.0](#), section 3.3). Furthermore, use of a domain name for purposes other than to host a website may also constitute bad faith. Such purposes include sending deceptive emails, phishing, identity theft, or malware distribution ([WIPO Overview 3.0](#), section 3.4).

Under these circumstances and on this record, the Panel finds that Respondent has registered and used the Domain Name in bad faith.

Complainant has established Policy, paragraph 4(a)(iii).

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, <biontech.bio>, be transferred to Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: October 10, 2023