

ADMINISTRATIVE PANEL DECISION

BioNTech SE v. BioNh BioNh, WeHere

Case No. D2024-0453

1. The Parties

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

The Respondent is BioNh BioNh, WeHere, Chile.

2. The Domain Name and Registrar

The disputed domain name <biontechjobs-us.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 January 31, 2024. On January 31, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 February 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 23, 2024.

The Center appointed Manuel Moreno-Torres as the sole panelist in this matter on February 29, 2024. 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 biotechnology company found in 2008 and with strong global media presence for its successful Covid-19 vaccine in collaboration to a third company.

The Complainant is the owner of BIONTECH trademark registration in the following jurisdictions:

European Intellectual Property Office with registration No. 008964447, registered on December 22, 2010.

International registration No. 1478253, registered on April 5, 2019.

United States Patent and Trademark Office with registration No. 5712036 registered on April 2, 2019.

BIOTECH trademark is to be considered well-known for UDRP according to previous panel decisions. See *BioNTech SE v. Anonymize, Inc. / Wang Liqun*, WIPO Case No. [D2022-3413](#).

The Complainant owns a portfolio of domain names. As such <biontech.com>, <biontech.info> and <biontech.net>.

The disputed domain name was registered on November 29, 2023, and is inactive.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the addition of the terms "jobs-us" cannot prevent a finding of confusingly similarity.

The Respondent lacks rights or legitimate interests in the disputed domain name and that the disputed domain name was registered and is being used 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, to succeed the Complainant must satisfy 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;

(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.

There are no exceptional circumstances within paragraph 5(f) of the Rules to prevent the Panel from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a Response. Under paragraph 14(a) of the Rules in the event of such a "default" the Panel is still required "to proceed with a decision on the complaint", whilst under paragraph 14(b) it "shall draw such inferences there from as it considers appropriate". This dispute resolution procedure is accepted by the domain name registrant as a condition of registration.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, "jobs" and "us", separated by a hyphen, may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that the composition of the disputed domain name, reproducing the Complainant's BIONTECH mark, added by the terms "jobs" and "us", the latter considered as an abbreviation for "United States", carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel looks at [WIPO Overview 3.0](#) section 3.1.1 for circumstances indicating bad faith registration, including how “...the nature of the domain name and the distinctiveness of trademark at issue, among other factors, are relevant to this inquiry”, and concludes that the disputed domain name falls within what is deemed to be considered bad faith registration.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes (i) the distinctiveness and reputation of the Complainant’s trademark; (ii) the composition of the disputed domain name; (iii) the concealment of the Respondent’s contact details through the use of a privacy service, as well as; (iv) the absence of a Response by the Respondent, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 <biontechjobs-us.com> be transferred to the Complainant.

/Manuel Moreno-Torres/

Manuel Moreno-Torres

Sole Panelist

Date: March 14, 2024