

## **ADMINISTRATIVE PANEL DECISION**

BioNTech SE v. Marcin Lyszczarz, Myolc AB  
Case No. D2024-1471

### **1. The Parties**

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

The Respondent is Marcin Lyszczarz, Myolc AB, Sweden.

### **2. The Domain Name and Registrar**

The disputed domain name <factsaboutbiontech.com> is registered with One.com A/S (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 8, 2024. On April 8, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 9, 2024, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 9, 2024, 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 April 14, 2024.

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 April 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 7, 2024. The Response was filed with the Center on May 6, 2024. The Complainant filed a supplemental filing on May 20, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on May 28, 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.

On May 30, 2024, the Panel issued Procedural Order No. 1 to the Parties. This indicated that the Panel had decided to accept the Complainant's supplemental filing and invited the Respondent to comment, solely on the Complainant's supplemental filing, within five calendar days, i.e., on or before June 4, 2024. The due date for the Decision was extended to June 16, 2024. The Respondent did not file any comments in response to Procedural Order No. 1 before the deadline concerned. The Respondent sent communications on June 17 and 18, 2024, asking for a late possibility to comment which the Panel declined to accept as untimely.

#### 4. Factual Background

The Complainant is a German company founded in 2008 with its registered office in Mainz, Germany. The Complainant developed a strong global media presence during the COVID-19 pandemic because it was one of very few companies which developed a vaccine (in cooperation with pharmaceutical company Pfizer) based on messenger RNA ("mRNA"), known in the media as the BioNTech/Pfizer (or Pfizer/BioNTech) Covid-19 vaccine. This was the first mRNA vaccine approved for any disease.

The Complainant maintains a portfolio of registered trademarks for the word mark BIONTECH covering various jurisdictions including, for example, European Union Registered Trademark Number 008964447 for the word mark BIONTECH, registered on December 22, 2010, in Classes 1, 5, 42, and 44.

The disputed domain name was registered on March 1, 2024, and according to the Complainant's screenshot dated March 28, 2024, it points to a parking page provided by the Registrar. The Respondent is the representative of Myolc AB, a Swedish company (Aktiebolag) with its registered office in Boden, Sweden. According to a company report produced by the Complainant, the Respondent's company was incorporated on December 30, 2020, and registered its name and Articles of Association in April 2023. Said report also states that the Swedish industry classification of the Respondent's company is "70220 Consultancy regarding company organization," and "90640 Body care", adding in a business description, "The company shall conduct activities within natural therapy, sales of natural beauty products and related activities".

The Respondent claims that the disputed domain name is "part of the newly initiated OFFAAC project, currently in its consulting and planning phase", adding that "it is planned for [the disputed domain name] to serve as a showcase at OFFAAC's website "www.offaac.com" ('the OFFAAC Website'), presenting raw facts about BioNTech SE supplied by BioNTech itself and used as references in other articles to substantiate claims made therein".

Both of the Parties produce extracts from the OFFAAC Website. The alleged organization presenting the OFFAAC Website states on its "Our Partners" page that it partners with the Respondent. The website also states that the OFFAAC's mission is "to empower every individual with the ability to clearly discern truth in a world crowded with misinformation. We strive to create a transparent, reliable information environment where everyone can access and trust the data they encounter daily. By harnessing innovative technologies, we aim to dismantle barriers to information integrity and ensure that every piece of data serves to enlighten rather than mislead. Our goal is to support informed decision-making in all aspects of life, reinforcing the foundation of truth that underpins our society".

The OFFAAC Website goes on to offer services including a "real-time updating and integration API" which will facilitate "seamless data synchronization across platforms," and a "customer-driven update system" whereby "businesses can directly control their narrative by updating their own information in our trusted database". The "Our Services" page offers "Automated Verification Mechanisms", "Interactive Fact-Checking Tools", "Educational Modules" and "Strategic Domain Name" services. The latter service is described as "Protect and manage strategically important domain names with our comprehensive service. We handle everything from securing domains that are crucial for your brand's protection to managing renewal and security settings, ensuring your online presence is robust and secure".

The Respondent notes: "As a nascent initiative, OFFAAC is actively seeking funding to initiate development. We are very much open to and would appreciate a partnership with BioNTech SE in our project. [...] Our

project is committed to supporting companies by providing a reliable and transparent portrayal, reinforcing their reputations through diligent fact-checking and accurate reporting". It adds: "Should the WIPO Administrative Panel consider the transfer of [the disputed domain name] to [the Complainant], we respectfully request the Administrative Panel to consider encouraging [the Complainant] to compensate OFFAAC with a contribution. This support would enable the continuation and expansion of our project [...]".

## **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 its BIONTECH trademark is clearly recognizable within the disputed domain name, and the addition of other terms, such as term "facts" and "about" would not prevent the finding of confusing similarity. The Complainant adds that the Respondent is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use or register its trademark in a domain name or otherwise. The Complainant contends that the Respondent has not demonstrated the use or preparations to use the disputed domain name in connection with a bona fide offering of goods or services and registered the disputed domain name solely to take unfair advantage of the Complainant's reputation, adding that it redirects to a Registrar parking page and has been configured with Mail Exchange ("MX") records (email services), raising the question of whether it has been or will be used in a phishing scheme. The Complainant states that the Respondent is not commonly known by the name "Biontech" and is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant asserts that the worldwide fame of the Complainant means that it is implausible that the Respondent registered the disputed domain name without knowledge of the Complainant. It contends that bad faith has been found where a domain name is so obviously connected with a well-known trademark that its use by an unconnected party suggests opportunistic bad faith, adding that the Respondent will have warranted to the Registrar that, to its knowledge, the disputed domain name would not infringe the rights of any third party. The Complainant asserts that the passive holding of the disputed domain name amounts to bad faith registration and use, given that the high degree of notoriety of its trademark makes it difficult to imagine any conceivable good faith to which it might be put. The Complainant adds that the expression "facts about" in the disputed domain name suggests a fan or criticism site but that there is no such active site, and that the Respondent's behavior indicates that it has no such purpose in mind and plans to capitalize on the Complainant's trademark rights.

### **B. Respondent**

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent asserts that the fact that there is no active website under the disputed domain name means that there can be no infringement of the Complainant's rights, adding that there has been no use for fraudulent activities nor any intent to use the disputed domain name for such purposes. The Respondent adds that "the acquisition of [the disputed domain name] was conducted in good faith, with the intention of offering our services to [the Complainant] recognizing their ongoing efforts in safeguarding their brand", adding "the ethical and societal benefits of our operation underscore our good faith". The Respondent provides details of OFFAAC's mission to explain why it believes that its organization is needed and adds, "We invite [the Complainant] and other stakeholders to collaborate on this venture".

### **C. Complainant's supplemental filing**

In its supplemental filing, the Complainant contends (in summary) as follows: The connection between the Respondent and the OFFAAC is unclear and is not mentioned on the latter's website. The Complainant

notes that the Respondent's company does not appear to have an active website and has no employees. The Complainant asserts that the question of the Respondent's rights and legitimate interests should be assessed by reference to the Respondent and to no other entity. The Complainant submits that no evidence was produced by the Respondent of demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, or showing that it is known by the disputed domain name. With regard to noncommercial or fair use, the Complainant contends that the disputed domain name was allegedly acquired with the intention of providing those services to the Complainant that are listed on the OFFAAC Website, which includes such commercial activities as data management, strategic domain name services, and subscription-based educational programs, among others. The Complainant indicates that the disputed domain name is not being used for legitimate purposes but rather as a pretext for commercial gain or other purposes inhering to the Respondent's benefit, adding that this cannot be considered fair use nor could be regarded as giving rise to legitimate interests under the Policy. The Complainant notes that no offer of the Respondent's services has ever been presented to it, nor have there been attempts by the Respondent to contact the Complainant.

The Complainant asserts that the OFFAAC is a recent innovation of the Respondent, to be deployed if its registration of the disputed domain name would be challenged, adding that there was no attempt by the Respondent to make its activities transparent, and that it hid itself behind a privacy service. The Complainant contends that pretextual use is demonstrated by the fact that the registration of the disputed domain name on March 1, 2024 predates that of the domain name <offaac.com> on March 9, 2024, that no records may be found of the activities of OFFAAC online, there is no record in Sweden or otherwise of any registered entity named "OFFAAC" nor any corresponding trademark registrations or applications, there is no evidence supporting the alleged acronym even on the OFFAAC website itself, and that while the OFFAAC website presents the Respondent as a partner "specializing in business organization", publicly available company data indicates that the Respondent's registered principal industry includes "bodycare", further increasing the likelihood that OFFAAC is a recent invention of the Respondent.

The Complainant submits that the composition of the disputed domain name strongly suggests endorsement by the Complainant and that this cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. The Complainant asserts that the Respondent should be more familiar with the consequences of registering domain names containing third party trademarks, given it claims to be an organization envisioned as helping companies with brand protection including "strategic domain name services".

The Complainant produces a list of 147 domain names that it has discovered have been registered by the Respondent on March 1, 2024, all of which are structured as "factsabout" followed by a well-known trademark or personal name of a prominent public figure or celebrity, within the ".com" generic Top-Level Domain ("gTLD"). The Complainant adds that engaging in a pattern of registering domain names corresponding to marks held by third parties has been found by previous panels to be an illustrative factor in assessing fair use, which indicates a lack of legitimate interest on the side of a respondent, and reaffirms the Respondent's bad faith in accordance with paragraph 4(b)(ii) of the Policy.

## **6. Discussion and Findings**

### **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 entirety of the mark is reproduced 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, “factsabout,” may bear on assessment of the second and third elements, the Panel finds the addition of such term does 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 Panel therefore turns to the Respondent’s case in order to determine whether it has rebutted the Complainant’s prima facie showing by bringing forward relevant evidence demonstrating rights or legitimate interests in the disputed domain name, such as those enumerated in the Policy or otherwise.

The essence of the Respondent’s case appears to be that it is partnering with a new organization which plans to publish “facts about” certain entities including the Complainant. It is not entirely clear whether the organization concerned genuinely exists, the Complainant having demonstrated that it has found no evidence of its existence, for example in the appropriate public registers (and the Respondent not having replied to the Complainant’s submissions in this respect). However, assuming for the moment that such entity exists and that the Respondent has registered the disputed domain name on its behalf, the Panel notes that the services to be offered under the OFFAAC banner are commercial in nature, thus excluding a defense of noncommercial use on the basis of paragraph 4(c)(iii) of the Policy. There is no evidence of any demonstrable preparations to use the disputed domain name other than that suggested by the OFFAAC Website. With regard to whether such use would constitute a bona fide offering of goods or services, the Panel notes that the Respondent seeks funding to initiate development of the project and is actively soliciting a partnership with the Complainant. The Respondent also goes on to note that its project is “committed to supporting companies [...]”, likewise confirming that it is looking for the Complainant’s participation in its commercial endeavor.

In the Panel’s view, such use of the disputed domain name cannot be bona fide and cannot give rise to rights or legitimate interests under the Policy since it seeks to compel the Complainant unfairly into engaging the Respondent’s services by appropriating the Complainant’s well-known trademark and using it in the disputed domain name, all with a view to obtaining a commercial benefit/preference for the Respondent or its partner. Whether the Complainant might be charged a fee for such services or simply asked to extend its support would also not be relevant. The proposal clearly encompasses a range of commercial services in respect of which the Respondent and/or its commercial partner seek a commercial benefit.

The circumstances are somewhat analogous to the run of cases in 2014 involving the registration of similarly well-known trademarks in the “.email” generic Top-Level Domain by a respondent which proposed to use the domain names concerned to provide an email service relating to the owners of the named trademarks. In

one of these cases, the Panel noted: “The Respondent’s registration of the disputed domain name is not bona fide because the Respondent has no right to hijack the Complainant’s trademark for its [email] service and no right to force the Complainant to work with the Respondent should the Complainant want to make use of the domain name now that the Respondent has registered it” (Panel’s parentheses) (see *Arla Foods amba v. G. La Porta / yoyo.email*, WIPO Case No. [D2014-0855](#)).

Panels in this run of cases also considered the respondent’s particular proposition in the context of a directory service. This is apposite in the present case, in that, as far as the Panel understands it, the OFFAAC project seeks to provide reliable information (“facts about”) participating entities named in the corresponding domain names whereby the disputed domain name would, with others, effectively support a directory of the subjects/participants. The three member panel in *The Royal Bank of Scotland Group plc, National Westminster Bank plc, and Coutts & Co. v. Domain Manager / yoyo.email / Giovanni Laporta*, WIPO Case No. [D2014-0825](#) agreed with the analysis of the panel in *Starwood Hotels & Resorts Worldwide, Inc., Sheraton LLC, Sheraton International IP, LLC v. Giovanni Laporta / yoyo.email*, WIPO Case No. [D2014-0686](#) on this topic, noting: “[...] any person may indeed be free to compile a directory of domain names, or telephones or addresses or similar, but need not for that purpose actually own any related domain names, by registration or otherwise. To compile a list or directory of trademarks, or company names, or business or trading names, the compiler need not acquire any rights whatsoever in those names. In most cases it would in fact render the directory pointless if he did. Here the Respondent has not established beyond bald assertion, how and why he needs to own the registered domain names for the purpose of establishing his intended service”. This approach may be applied to the present case, in that the Respondent has not explained why it needs to own (or why it would have any rights or legitimate interests in owning) the disputed domain name or indeed the other domain names listed by the Complainant in order to be able to communicate factual information regarding the Complainant or any of the other rights holders whose trademarks are contained in the list of domain names.

The principal difference between the “.email” cases and the present case is that the domain names in the former consisted mainly, if not entirely, of the unadorned trademark of the complainants concerned, whereas in the present case, the Respondent has added the prefix “factsabout” to each trademark or personality name. The Complainant asserts that this term, coupled with its trademark in the disputed domain name, suggests a fan or criticism site, while adding that the composition of the disputed domain name strongly suggests endorsement by the Complainant and/or that the disputed domain name impersonates the Complainant. This might have been a relevant issue, and the analysis of the Respondent’s rights and legitimate interests might have been different, had the proposed use of the disputed domain name been noncommercial in nature – and, importantly, had there been any actual (or demonstrably contemplated) critical (or fan) content; there is not. However, as discussed above, the Panel is satisfied that the Respondent, either for its own part or via the OFFAAC partnership, intends that the disputed domain name be used for a range of commercial, and not criticism-oriented purposes as listed on the OFFAAC Website and for that reason determines that the Respondent cannot avail itself of paragraph 4(c)(iii) of the Policy. Notably, the disputed domain name has been registered and is being used as a pretext for commercial gain or such other purposes inhering to the Respondent’s benefit. [WIPO Overview 3.0](#), section 2.5.2. Commercial gain may include the respondent gaining or seeking reputational and/or bargaining advantage, even where such advantage may not be readily quantified. [WIPO Overview 3.0](#), section 2.5.3.<sup>1</sup>

In all of these circumstances, the Panel considers that the Respondent has not established that it has rights or legitimate interests in terms of either paragraph 4(c)(i) of the Policy or paragraph 4(c)(iii) of the Policy. Paragraph 4(c)(ii) of the Policy may be discounted as the Respondent does not assert that it has been commonly known by the Complainant’s mark. Although the examples listed in paragraph 4(c) of the Policy

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<sup>1</sup> Section 2.5.3 of the [WIPO Overview 3.0](#) goes on to note that specific case factors have led panels to find that fair use need not always be categorically noncommercial in nature to benefit from the safe harbor of paragraph 4(c)(iii) of the Policy. For example, section 2.6.3 of the [WIPO Overview 3.0](#), indicates that some panels have found in cases involving criticism of a complainant’s mark that a limited degree of incidental commercial activity may be permissible, for example “fundraising” to offset registration or hosting costs associated with the domain name concerned. However, the present case displays an overtly commercial use which seeks to benefit directly from the repute of the Complainant’s mark. This is neither incidentally commercial, nor for that matter is it a use primarily for the purposes of criticism of or in tribute to the Complainant or its mark.

are expressed to be non-exhaustive, the Panel has been unable to identify any other way in which the Respondent might have established rights and legitimate interests in the disputed domain name within the meaning of the Policy.

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

### **C. Registered and Used in Bad Faith**

In the present case, the question of registration and use in bad faith is largely tied to the preceding question of rights and legitimate interests. Had the Respondent been able to establish that it was using the disputed domain name for fair, noncommercial, referential use to publish “facts about” the Complainant, it may have been able to establish that the disputed domain name was registered and used in good faith, in a manner similar to noncommercial criticism or tribute sites. However, the present case is not concerned with such a use as the Panel finds that the disputed domain name has been registered and is being used for commercial gain, and in fact has not yet been used at all to host content, critical or otherwise. Essentially, the Respondent has adopted the Complainant’s trademark in the disputed domain name (and has adopted other similarly well-known marks in other domain names) apparently with a view to establishing a partnership with the Complainant and presumably the other mark owners whereby it may be able to obtain financial backing for its venture. Adopting the Complainant’s mark in this way without the Complainant’s consent, and with a view to the Respondent’s own commercial benefit, could not be regarded as a good faith activity.

The Respondent underlines the fact that its activity is a pretext for commercial gain, or reputational and/or bargaining advantage, not only by publishing a range of services on the OFFAAC Website which it wishes to provide to the companies that would be the subject of the “facts about” websites under the corresponding domain names, including the disputed domain name, but also by seeking a financial donation from the Complainant in the event that the Panel finds against it.

As the panel in *Arla Foods amba v. G. La Porta / yoyo.email*, supra put the question of registration and use in bad faith in similar factual circumstances:

“[...] notwithstanding the Respondent’s protestations that its conduct cannot be in bad faith because it is planning to provide a free service that will be of value to the Complainant, other brand owners and the public more generally, the fact remains that the Respondent is doing this in furtherance of its commercial enterprise which unfairly piggybacks on the goodwill and reputation of brand owners without their authorization. In terms of the Policy, by registering this domain name, and many others that also contain brand names, in the “.email” gTLD, the Panel finds that the Respondent is attempting to attract Internet users to its website and email service for commercial gain. Further, by having a portfolio of many “.email” domain names that contain brand names, the Respondent is inevitably going to confuse consumers and other companies into believing that the companies whose trademarks are reflected in the Respondent’s domain names may have endorsed its Yoyo email service.”

The Panel endorses that approach in the present matter, noting in addition that the service proposed to be offered by the Respondent and/or its partner does not have the appearance of a free service, and that the Respondent has itself sought financial backing, a partnership and/or a donation from the Complainant in connection with the proposed use of the disputed domain name, being purposes inhering to the Respondent’s benefit. In all of these circumstances, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith, as the term is understood in 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 <factsaboutbiontech.com> be transferred to the Complainant.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: June 16, 2024