

ADMINISTRATIVE PANEL DECISION

Bioline Agrosiences Limited v. Privacy service provided by Withheld for Privacy ehf / Israel Constant
Case No. D2022-0024

1. The Parties

The Complainant is Bioline Agrosiences Limited, United Kingdom, represented by Cabinet Regimbeau, France.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Israel Constant, Italy.

2. The Domain Name and Registrar

The disputed domain name <biolineapp.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 4, 2022. On January 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 5, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 10, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed amended Complaints January 11 and 20, 2022.

The Center verified that the Complaint amended Complaints 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 January 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default February 16, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on February 18, 2022. 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 owns European Union Trade Mark No. 003265212 for BIOLINE (figurative), registered on December 15, 2004, covering goods and services in classes 31 and 44. Moreover, BIOLINE AGROSCIENCES FRANCE owns numerous registered trademarks containing the mark BIOLINE as well as the domain name <bioline-app.com> (Annex 5 to the Complaint). The Complainant and BIOLINE AGROSCIENCES FRANCE belong to the INVIVO GROUP, a French agricultural cooperative group (Annex 3 to the Complaint).

The disputed domain name was registered on September 15, 2021. It resolved to a website showing the Complainant's registered trademark; it also contained pay-per-click links which redirects Internet users to a website related to cryptocurrency and fund placement, as well as a contact form for sending direct messages after providing personal data. Finally, under the disputed domain name there was configured an e-mail server (Annex 1 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant is a British private limited company owned by INVIVO GROUP, a leading French agricultural cooperative group. The Complainant is active in more than 30 countries (particularly within the European Union) and offers a comprehensive range of sustainable and innovative products, solutions and services in the agriculture field.

The Complainant contributes to the emergence of the third way of agriculture with actors of the agricultural world in order to meet the needs of all men while preserving natural resources. It represents a unique alliance of recognized expertise at the service of the performance of French, European, and global agriculture and benefits from a recognized know-how to support farmers throughout their value chain: buying, sowing, feeding, managing, protecting, and developing.

The Complainant has rights in the mark BIOLINE, especially through the European Union Trade Mark No. 003265212, filed on July 10, 2003 (duly renewed), covering goods and services in classes 31 and 44.

The Complainant moreover has rights in the mark BIOLINE through its sister company BIOLINE AGROSCIENCES FRANCE which owns the following trademark registrations:

- French trademark BIOLINE FRANCE, Reg. No. 4311777, filed on November 3, 2016, covering goods and services in classes 31, 35, 42, and 44;

- French figurative trademark, Reg. No. 4311788, filed on November 3, 2016, covering goods and services in classes 31, 35, 42, and 44;

- International figurative trademark, Reg. No. 1351490, filed on March 22, 2017 with designations in numerous countries, covering goods and services in classes 31, 35, 42, and 44.

In addition, the Complainant's sister company BIOLINE AGROSCIENCES FRANCE is the owner of the domain name <bioline-app.com>.

Finally, the Complainant uses the mark BIOLINE as a business identifier and distinctive part of its company name.

The disputed domain name identically reproduces the Complainant's prior rights in the mark BIOLINE.

The Respondent has no rights or legitimate interests in the disputed domain name and has no connection with the Complainant in any way. In fact, the Respondent is not an authorized dealer, distributor or licensee of the Complainant and has not otherwise been permitted by the Complainant to make any use of its rights in the mark BIOLINE.

The Respondent has registered and used the disputed domain name in bad faith. The Complainant is an international company, active in more than 30 countries and belongs to the well-known leading agricultural cooperative INVIVO GROUP. It is implausible that the Respondent was unaware of the Complainant and/or its rights in the mark BIOLINE when registering the disputed domain name.

Moreover, the disputed domain name was used in bad faith since it resolved to an unsecured website providing information about the Complainant and its subsidiaries by specifically referring to BIOLINE and the INVIVO GROUP and by reproducing one of the Complainant's logos. It also contained a pay-per-click link – under a category entitled “product recommendations” – which redirected Internet users to a website related to cryptocurrency and fund placement. Moreover, the website provided the possibility to contact the Respondent by sending a direct message that required personal data (name, surname, company, phone, email) – thus, there was a serious risk of phishing.

The Complainant tried to contact – twice – the Respondent via its anonymized email address but did not receive any response.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, 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 with respect to 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 Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark BIOLINE.

The disputed domain name is confusingly similar to the trademark BIOLINE in which the Complainant has rights, since it entirely contains this mark and only adds the word “app”.

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition “[WIPO Overview 3.0](#)”).

Finally, it has also long been held that generic Top-Level Domains (“gTLDs”) are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy

B. Rights or Legitimate Interests

While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the mark BIOLINE, in which the Complainant has rights, in its entirety together with the term “app”, used by the Complainant or its sister company, e.g., in connection with the domain name <bioline-app.com>, cannot be considered fair as it falsely suggests an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

The Complainant has rights and is the owner of the registered trademark BIOLINE, which is registered and used in many countries. Moreover, the domain name <bioline-app.com> is registered and is being used by the Complainant’s sister company BIOLINE FRANCE.

It is inconceivable for this Panel that the Respondent registered the disputed domain name without knowledge of the Complainant’s rights in the mark BIOLINE, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant’s trademark BIOLINE entirely. Furthermore, the disputed domain name contains the term “app”, which in fact even strengthens the impression that the Respondent must have known the mark BIOLINE when registering the disputed domain name, since the suffix “app” falsely suggests that the Complainant provides online services under the disputed domain name which is not the case.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

The Respondent actively used the disputed domain name in bad faith, because it resolved to a website providing information about and impersonating the Complainant and its subsidiaries by specifically referring to BIOLINE and the INVIVO GROUP as well as by reproducing one of the Complainant’s logos. It also

contained a pay-per-click link under “product recommendations” which also redirected Internet users to a website related to cryptocurrency and fund placement; this website also provided the possibility to contact the Respondent by sending a direct message that required personal data (name, surname, company, phone, email). Finally, an email server has been configured on the disputed domain name by the Respondent and thus, there might be a risk that the Respondent is engaged in a phishing scheme, when using an email address associated with the disputed domain name.

Moreover, this Panel also finds bad faith in the present case putting emphasis on the following:

- the Complainant’s trademark BIOLINE is distinctive;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name incorporates the Complainant’s trademark in its entirety, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant’s site); and
- there is no plausible good faith use to which the disputed domain name could be put.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) 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 <biolineapp.com> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: March 4, 2022