

## **ADMINISTRATIVE PANEL DECISION**

BioNTech SE v. Hulda Wilson

Case No. D2023-1883

### **1. The Parties**

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

The Respondent is Hulda Wilson, United Kingdom.

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

The disputed domain name <comirnaty.asia> is registered with Porkbun LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 2023. On April 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 27, 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 (Private by Design, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 28, 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 May 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 May 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 25, 2023.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on June 12, 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 was founded in 2008 and is a next generation biotechnology company pioneering the development of novel therapies for cancer and other serious diseases.

The Complainant is BioNTech with a strong global media presence due to the fact that they are one of a few companies which have developed a vaccine to induce immunity and prevent COVID-19 infections in response to the growing global health crisis.

The Complainant, in cooperation with Pfizer, has started "Project Lightspeed" and developed a successful vaccine known in the media as the Pfizer/BioNTech Covid-19 vaccine, which is sold under the brand name COMIRNATY.

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

- International Trademark COMIRNATY Registration No. 1544862 registered on June 23, 2020 and covering goods in class 5.
- European Union Trademark COMIRNATY Registration No. 018247442 registered on October 7, 2020 and covering goods in class 5.
- United States Trademark COMIRNATY Registration No. 6312239 registered on April 6, 2021 and covering goods in class 5.

The Complainant is the owner, among others, also of a domain name <comirnaty.com> which registered on May 28, 2020.

The disputed domain name <comirnaty.asia> was registered on December 4, 2022 and resolves to a parking page with sponsored links (pay-per-clicks or PPC).

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant argues that the disputed domain name is identical to the Complainant's well-known trademark COMIRNATY which is highly distinctive as it is an invented word used exclusively by the Complainant.

It is well established that the generic Top-Level Domain ("gTLD") ".asia", being a necessary component of a domain name, may be disregarded for the purpose of comparison under this ground.

The Complainant demonstrates that the disputed domain name resolves to a parking page comprising of PPC sponsored links.

Moreover, on the website to which the disputed domain name resolves a link to SEDO webpage is displayed on which Internet users may place an offer for purchase of the disputed domain name.

The Complainant, on December 13, 2022, sent the Registrar a request to reveal the registrant's identity in order to obtain contact details of the Respondent and to try to resolve this matter amicably. As no amicable solution could be found the Complainant initiated UDRP proceedings against the Respondent in order to obtain the transfer of 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 trademarks or to register any domain name including its trademarks.

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 deems applicable.

### **A. Identical or Confusingly Similar**

In the present case, the disputed domain name <comirnaty.asia> is identical to the Complainant's registered trademark COMIRNATY.

The Complainants have shown they own trademark rights in the COMIRNATY trademark.

It is clear that the disputed domain name incorporates in its entirety the COMIRNATY trademark.

It is well established that the gTLD ".asia", being a necessary component of a domain name, may be disregarded for the purpose of comparison under this ground. See, *F. Hoffmann-La Roche AG v. Macalve e- dominios S.A.*, WIPO Case No. [D2006-0451](#); and *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

The Panel finds that the first element of the Policy has been met.

### **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.

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

Past 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 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**

The Panel, based on the evidence presented, accepts, and agrees with the Complainant's contention that the disputed domain name was registered and is being used in bad faith.

On the evidence adduced it is improbable that the registrant of the disputed domain name was unaware of the Complainant's name, trademark, reputation, and goodwill when the disputed domain name was registered.

In *The Nasdaq Stock Market, Inc., v. Hamid Reza Mohammad Pouran*, WIPO Case No. [D2002-0770](#), the panel held: "The Respondent knew or should have known of the existence of the Complainant, [as] the Complainant's trademark [was] widely publicized globally and constantly featured throughout the Internet, and thus the Panel decides that the disputed domain names were registered in bad faith."

The Respondent, by using the disputed domain name, is intentionally misleading the consumers and confusing them trying to attract them to other websites making them believe that the websites behind those links are associated with or recommended by the Complainant.

The bad faith registration and use of the disputed domain name is also affirmed by the fact that the Respondent has not denied, or even responded to, the assertions of bad faith made by the Complainant in this proceeding.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied 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, <comirnaty.asia> be transferred to the Complainant.

*/Eva Fiammenghi/*

**Eva Fiammenghi**

Sole Panelist

Date: June 26, 2023