

ADMINISTRATIVE PANEL DECISION

bioMérieux v. Name Redacted

Case No. D2023-3070

1. The Parties

Complainant is bioMérieux, France, represented by Plasseraud IP, France.

Respondent is Name Redacted.¹

2. The Domain Name and Registrar

The disputed domain name is <biomrieux.com> which is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 18, 2023. On July 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 19, 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 those in the Complaint (Contact Privacy Inc. Customer 7151571521). The Center sent an email communication to Complainant on July 20, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. On July 21, 2023, Complainant filed an amended Complaint.

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 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 24, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on August 25, 2023.

¹ The Respondent appears to have used the name of a third party when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent’s name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

The Center appointed Gerardo Saavedra as the sole panelist in this matter on September 1, 2023. This Panel finds that it was properly constituted. This 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 French multinational biotechnology company, whose company name is registered in France since 1988.

Complainant has rights over the BIOMERIEUX mark for which it holds several mark registrations in a number of jurisdictions, such as International Registration No. 933598, registered on June 12, 2007, in classes 1, 5, 9 and 10; and United States Registration No. 3906321, registered on January 18, 2011, in classes 1, 5, 9 and 10.

Complainant appears as registrant of the domain names <biomerieux.com> created on May 31, 1996, <biomerieux.net> created on October 20, 2000, and <biomerieuxusa.com> created on April 4, 2001, among others that include the term “biomerieux”.

The disputed domain name was registered on July 10, 2023. At the time the Complaint was filed, the disputed domain name did not resolve to an active website.

5. Parties' Contentions

A. Complainant

Complainant's assertions may be summarized as follows.

Founded in 1963, Complainant is a biotechnology company that serves more than 160 countries, having 43 subsidiaries around the world and a large network of distributors. Complainant's products are mainly used for diagnosing infectious diseases, as well as for detecting microorganisms in agri-food, pharmaceutical and cosmetic products.

Complainant (directly and through its local subsidiaries) has been using “biomerieux” as a registered company name in most countries of the world, for example bioMérieux Inc., in the United States, bioMérieux Canada Inc., in Canada, and bioMérieux SA in France.

Complainant is the owner of many registered marks for BIOMERIEUX (word and/or device) all over the world. UDRP decisions have steadily recognized the well-known feature of the BIOMERIEUX mark. Further, Complainant (or its subsidiaries) is also the owner of many domain names including “biomerieux” alone or combined with other elements, and operates corresponding websites, notably at “www.biomerieux.com”.

The disputed domain name is confusingly similar to Complainant's mark since it reproduces entirely the BIOMERIEUX mark with a single slight modification: the letter “e” in the first part of the mark has been moved at its end in the disputed domain name. This unique difference produces a very limited impact and does not alter the overall perception of the disputed domain name as being extremely similar to the BIOMERIEUX mark.

Respondent cannot have any rights nor legitimate interests in respect of the disputed domain name. Complainant has no relation with Respondent, and has never given its consent for Respondent to use its mark or any other similar sign such as “biomrieuex” in a domain name or in any other manner.

The disputed domain name reflects a deliberate misspelling of BIOMERIEUX, a typical case of typosquatting. The term “biomrieuex” does not correspond to the name of Respondent, and does not correspond to a registered mark or distinctive sign, as evidenced by the results of a search performed on all worldwide trademark and other distinctive sign databases available online. A Google search over such term solely provides results relating to Complainant’s BIOMERIEUX mark. There is no evidence of any fair or noncommercial or *bona fide* use of the disputed domain name because the latter does not redirect to any webpage. However, the composition of the disputed domain name carries a risk of implied affiliation with Complainant as it effectively impersonates or suggests sponsorship or endorsement by Complainant.

Respondent’s registration and use of the disputed domain name is in bad faith. Respondent registered the disputed domain name with the BIOMERIEUX mark in mind. At the time of registration of the disputed domain name, said mark was well-known for many years. Respondent appears located in the United States where Complainant holds several registered marks and thus Respondent must be considered as having constructive notice of Complainant’s prior rights.

The term “biomrieuex” does not have any meaning *per se* and therefore makes sense only because of its almost identity with the BIOMERIEUX mark, which evidences a clear case of typosquatting. Thus, no third party can legitimately hold and use the disputed domain name.

Respondent hides its identity and contact information through a privacy service. However, Respondent’s name corresponds, with a slight difference in the first name, to a person working for Complainant, and the name of Respondent’s organization consists of Complainant’s main domain name <biomerieux.com>, which means that Respondent very likely tried to impersonate a Complainant’s employee when registering the disputed domain name. Further, Respondent’s street address corresponds to the address of a company engaged in the same field of activity as Complainant, and the area code for Respondent’s phone number does not correspond to said street address location. In sum, providing false contact details to the Registrar amounts to bad faith registration and contributes to evidence bad faith use.

The disputed domain name conveys a very high risk of implied affiliation with Complainant. MX records have been set up on the disputed domain name enabling Respondent to send emails through email addresses linked to it, which entails the possibility that Respondent is using, or plans to use the disputed domain name to send fraudulent emails. Respondent has also configured a SPF record with the disputed domain name. Such an advanced technical configuration reveals a willingly and genuine intent to use the disputed domain name to exchange emails and to maximize the deliverability of emails sent from the disputed domain name.

Complainant requests that the disputed domain name be transferred to Complainant.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

The lack of response from Respondent does not automatically result in a favorable decision for Complainant (see *Berlitz Investment Corp. v. Stefan Tinculescu*, WIPO Case No. [D2003-0465](#) and section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”). The burden for Complainant, under paragraph 4(a) of the Policy, is to show: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) that Respondent has no rights or legitimate interests in respect of 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

It is undisputed that Complainant has rights over the BIOMERIEUX mark.

Since the addition of a generic Top-Level Domain (*i.e.* “.com”) after a domain name is technically required, it is well established that such element may be disregarded where assessing whether a domain name is identical or confusingly similar to a mark. Taking into account the aforesaid, it is clear that the disputed domain name almost identically reproduces the BIOMERIEUX mark. This Panel considers that such mark is recognizable in the disputed domain name and that the displacement of its “e” letter in the disputed domain name does not avoid a finding of confusing similarity with said mark (see sections 1.7 and 1.9 of the [WIPO Overview 3.0](#)).

Thus, this Panel finds that Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Complainant has alleged and Respondent has failed to deny that Respondent has no rights or legitimate interests in respect of the disputed domain name.

Complainant contends that it has no relationship with Respondent, that it has not authorized Respondent to use its BIOMERIEUX mark² or a similar term, that “biomrieuex” does not correspond to a registered mark, that the disputed domain name suggests sponsorship or endorsement by Complainant, and that Respondent has not made any demonstrable preparations to use the disputed domain name for legitimate purposes. The evidence in the file shows that there is no active website linked to the disputed domain name.³ Nonetheless, the typosquatting nature of the disputed domain name, which almost identically reflects Complainant’s name and mark, cannot confer rights or legitimate interests upon Respondent.

This Panel considers that Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name (see section 2.1 of the [WIPO Overview 3.0](#)). In the file there is no evidence of circumstances of the type specified in paragraph 4(c) of the Policy or of any other circumstances giving rise to a possible right to or legitimate interest in the disputed domain name by Respondent.

Based on the aforesaid, this Panel concludes that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Complainant contends that Respondent’s registration and use of the disputed domain name is in bad faith, which Respondent chose not to rebut.

The disputed domain name incorporates Complainant’s BIOMERIEUX mark coupled with just a minor typographical error variation, practice commonly known as typosquatting and which has been deemed as a strong indicative of bad faith under a number of UDRP decisions.⁴

² See *Casio Keisanki Kabushiki Kaisha (Casio Computer Co., Ltd.) v. Jongchan Kim*, WIPO Case No. [D2003-0400](#): “There is no evidence that the Complainant authorized the Respondent to register the disputed domain name or to use the CASIO trademark, with or without immaterial additions or variants. These circumstances are sufficient to constitute a *prima facie* showing by the Complainant of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent”.

³ See *“Dr. Martens” International Trading GmbH and “Dr. Maertens” Marketing GmbH v. Godaddy.com, Inc.*, WIPO Case No. [D2017-0246](#): “Respondent’s lack of use of the Domain Name is a strong indication of its lack of rights or legitimate interests in the Domain Name”.

⁴ See *Amazon.com, Inc. v. Steven Newman a/k/a Jill Wasserstein a/k/a Pluto Newman*, WIPO Case No. [D2006-0517](#): “the practice of typosquatting, in and of itself, constitutes bad faith registration”. See also *Go Daddy Software, Inc. v. Daniel Hadani*, WIPO Case No. [D2002-0568](#): “Typosquatting is virtually *per se* registration and use in bad faith”.

Further, although the disputed domain name does not resolve to an active website, it seems to this Panel that there is no basis in the case file to conceive a legitimate use of the disputed domain name by Respondent.⁵ The confusing similarity of the disputed domain name with Complainant's name and mark, coupled with the fact that the disputed domain name is configured to send emails, makes this Panel consider that the disputed domain name may potentially be used for fraudulent activities.⁶

The evidence in the file shows that Respondent's name as registrant substantially corresponds to the name of a Complainant's employee, and Respondent's organization name as registrant corresponds to Complainant's <biomerieux.com> domain name, which indicate that most likely Respondent provided false names. It might be that Respondent might have adopted such names as registrant, along with the confusingly similar disputed domain name, as a potential scheme to convey a false impression, like impersonating Complainant or such Complainant's employee through phishing emails or otherwise. Additionally, further indications of Respondent's bad faith are Respondent's use of a privacy service to hide its name and contact details, along with Respondent's use of a street address and phone number that, based on the evidence in the file, seem to indicate that Respondent provided inaccurate contact details.

In sum, the overall evidence indicates that Respondent's choice of the disputed domain name was deliberate for its confusing similarity with Complainant's name and BIOMERIEUX mark (and Complainant's <biomerieux.com> domain name), and with the likely intention to benefit from them, and potentially disrupt Complainant's business or deceive third parties, which denotes bad faith.

In this Panel's view, the lack of response is also indicative that Respondent lacks arguments and evidence to support its holding of the disputed domain name.

In light of the above, this Panel finds that 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, this Panel orders that the disputed domain name <biomerieux.com> be transferred to Complainant.

/Gerardo Saavedra/

Gerardo Saavedra

Sole Panelist

Date: September 15, 2023

⁵ See *Ferrari S.p.A. v. Ms. Lee Joohee (or Joo-Hee)*, WIPO Case No. [D2003-0882](#): "Respondent has provided no evidence or suggestion of a possible legitimate use of the Domain Name. Thus, in the words of Telstra, it is not possible to conceive of any plausible actual or contemplated active use of the Domain Name by the Respondent that would not be illegitimate". See also *Flight Refuelling Ltd v. Neog Inc*, WIPO Case No. [D2005-0503](#): "there is no website that corresponds to the domain name [...] the Panel is satisfied that Respondent is acting in bad faith [...] The Panel cannot conceive of a situation in which Respondent could use the name in good faith, and Respondent has not suggested that there are any". See also section 3.3 of the [WIPO Overview 3.0](#).

⁶ See *Arnold Clark Automobiles Limited v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2021-3924](#): "the mere presence of mail servers and SPF records represents a severe risk of phishing or other fraudulent and abusive activities [...] it is rather difficult to imagine that mail server attached to disputed domain name would be used for any good faith purposes". See also *Twitter, Inc. v. Whois Agent, Whois Privacy Protection Service, Inc. / Domain Support*, WIPO Case No. [D2015-1488](#), and section 3.4 of the [WIPO Overview 3.0](#).