

## **ADMINISTRATIVE PANEL DECISION**

bioMérieux v. Bio Tec, RRD LLC

Case No. D2022-3293

### **1. The Parties**

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

The Respondent is Bio Tec, RRD LLC, United States of America (“United States”).

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

The disputed domain name <biomcrieux.com> (“Domain Name”) is registered with Realttime Register B.V. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 5, 2022. On September 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 6, 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 September 6, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on September 12, 2022.

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 September 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 2, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 3, 2022.

The Center appointed Nicholas Smith as the sole panelist in this matter on October 7, 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 is a French company, specializing in biotechnology and offering a range of products used for diagnosing infectious diseases. The Complainant serves more than 160 countries, and in 2021 had revenue of EUR 3.38 billion. It has traded for more than 50 years (and for over 30 years under its current name) and promotes its services from various websites including websites located at the domain names <biomerieux.fr> and <biomerieux.com>, each of which was registered in 1996.

The Complainant is the owner of trade mark registrations in various jurisdiction for marks consisting of the word “biomerieux” (the “BIOMERIEUX Mark”) including an United States registration in classes 1, 5, 9, and 10 (Registration No. 3906321, registered on January 8, 2011).

The Domain Name was registered on August 8, 2022. The Domain Name does not, and there is no evidence that it ever has, resolved to an active website (rather it redirects to a default page hosted by the Registrar).

#### **5. Parties’ Contentions**

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

The Complainant makes the following contentions:

- (i) that the Domain Name is confusingly similar to the Complainant’s BIOMERIEUX Mark;
- (ii) that the Respondent has no rights nor legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the BIOMERIEUX Mark, being the owner of trade marks registered in various jurisdictions for the BIOMERIEUX Mark. The Domain Name consists of a minor misspelling of the BIOMERIEUX Mark, replacing first “e” with a “c”, and adding the “.com” generic Top-Level-Domain (“gTLD”).

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the BIOMERIEUX Mark and the Respondent is not commonly known by the Domain Name. The Respondent does not use the Domain Name for a *bona fide* purpose or legitimate noncommercial purpose. Rather the Domain Name has never been used in any active way.

The Respondent has registered and uses the Domain Name in bad faith. Given the fame of the BIOMERIEUX Mark and the nature of the Domain Name, being a minor misspelling (also known as typosquatting) of the BIOMERIEUX Mark, there are no plausible circumstances under which the Respondent could legitimately use the Domain Name other than in bad faith. In such circumstances, the Respondent’s passive holding of the Domain Name amounts to use of the Domain Name in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

To prove this element, the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the BIOMERIEUX Mark, having registrations for the BIOMERIEUX Mark as a trade mark in various jurisdictions, including the United States.

Disregarding the ".com" gTLD, as a necessary technical requirement of the Domain Name, the Domain Name is confusingly similar to the BIOMERIEUX Mark since it wholly incorporates the BIOMERIEUX Mark, other than replacing the first "e" with a "c" which creates a minor distinction that would be easy for an Internet user to overlook. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

### B. Rights or Legitimate Interests

To succeed on this element, a complainant may make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If such a *prima facie* case is made out, the respondent then has the burden of demonstrating rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the BIOMERIEUX Mark or a mark similar to the BIOMERIEUX Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name.

There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a *bona fide* offering of goods or services, or for a legitimate noncommercial or fair use. In fact, there is no evidence of any demonstrable preparations to use the Domain Name at all.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has chosen not to respond to the Complaint and thus has failed to provide any evidence of rights and legitimate interests in the Domain Name. The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

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

For the purposes of paragraph 4(a)(iii) of the Policy, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of the Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant who is the owner of the trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the Domain Name; or
- (ii) the Respondent has registered the Domain Name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The Panel finds on the balance of probabilities that the Respondent was aware of the Complainant and its reputation in the BIOMERIEUX Mark at the time the Respondent registered the Domain Name. The BIOMERIEUX Mark has been used for over 30 years and has a considerable international reputation. There is no obvious reason, nor has the Respondent offered an explanation, for the Respondent to register a domain name that consists of a minor misspelling of the BIOMERIEUX Mark unless there was an intention to create a likelihood of confusion between the Domain Name and the Complainant and the BIOMERIEUX Mark. The registration of the Domain Name in awareness of the BIOMERIEUX Mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith.

Considering the nature of the Domain Name itself, being a minor misspelling of a well-known mark, the failure by the Respondent to participate in this proceeding or otherwise provide any explanation of its conduct in registering a domain name that is confusingly similar to the BIOMERIEUX Mark and the lack of any apparent legitimate reason for the registration and use of the Domain Name, the Panel finds that the passive holding of the Domain Name does not prevent a finding of bad faith. Moreover, the Panel is prepared to infer, based on the conduct of the Respondent, that the Domain Name is most likely being held pending use in a bad faith manner that would take advantage of confusion between the Domain Name and the BIOMERIEUX Mark.

Accordingly, the Panel finds that the Respondent has registered and is using the Domain Name 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 Domain Name, <biomcrieux.com>, be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: October 12, 2022