

ADMINISTRATIVE PANEL DECISION

BioNTech SE v. Sandra Eggers

Case No. D2022-4905

1. The Parties

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

The Respondent is Sandra Eggers, Germany.

2. The Domain Names and Registrar

The disputed domain names <biontech.bayern> and <biontech.technology> are registered with Ascio Technologies Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 21, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on December 23, 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 an amended Complaint on December 28, 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 January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 24, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on January 30, 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 develops and manufactures active immunotherapies for patient-specific approaches to the treatment of diseases, including pharmaceutical candidates based on messenger RNA for the use as individualized cancer immunotherapies and as vaccines against infectious diseases. The Complainant is widely known as it is one of the few companies which have developed a vaccine in relation to COVID-19 infections.

The Complainant is the proprietor of a large number of longstanding trademark registrations in numerous jurisdictions for its BIONTECH word mark, including the German Trademark No. 302008081376, registered on August 21, 2008, for goods in class 5; and the European Union Trademark No. 008964447, registered on December 22, 2010, for goods in class 1 and 5, and for services in class 42 and 44 (Annex 7 to the Complaint).

The Complainant is also the registrant of numerous domain names containing its BIONTECH mark, including <biontech.com> and <biontech.net> (Annex 8 to the Complaint).

The Respondent is reportedly an individual from Germany.

The disputed domain names were both registered on January 28, 2022.

The disputed domain names resolve to parking pages and apparently have not yet been associated to an active website. However, the Respondent configured MX records for the disputed domain names, which enable the Respondent to send and receive emails using the disputed domain names (Annex 5 to the Complaint).

On February 2, and 10, 2022, the Complainant sent takedown notices to the mail service provider in order to achieve a takedown of mails servers to the disputed domain names (Annex 6 to the Complaint). This approach remained unsuccessful.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain names.

The Complainant is of the opinion that the disputed domain names are identical to its BIONTECH trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain names in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant is the owner of the BIONTECH trademark, which is widely known and registered in various jurisdictions (Annex 7 to the Complaint), including in Germany, where the Respondent is reportedly located.

The Panel finds that the disputed domain names are, in view of the Panel, identical to the Complainant's BIONTECH trademark as they incorporate the Complainant's trademark in its entirety without any additions or amendments.

In this regard, the Panel notes that the generic Top-Level Domains ("gTLDs") (".bayern" and ".technology" in this case) may, as a general principle, be disregarded when assessing identity or confusing similarity between a domain name and a trademark, see [WIPO Overview 3.0](#), section 1.11.1.

In view of the finding above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain names to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's BIONTECH trademark within the disputed domain names.

In the absence of a Response, the Respondent has failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c), or provide any other

evidence of rights or legitimate interests in the disputed domain names. On the contrary and bearing in mind that the Respondent has configured an MX email server for the disputed domain names, the Panel cannot exclude that the disputed domain names may already have been used in connection with possibly fraudulent or illegitimate activities by the Respondent.

Noting that the disputed domain names are identical to the Complainant's BIONTECH trademark, which carry a high risk of implied affiliation, the Panel has no doubt that the Respondent's intent is to impersonate the Complainant, which in view of the Panel results in an illegitimate use that can never confer rights or legitimate interests upon the Respondent, see [WIPO Overview 3.0](#), sections 2.5.1 and 2.13.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is convinced that the Respondent was aware of the Complainant's widely-known trademark when she registered the disputed domain names in January 2022. At the date of registration, the Complainant's BIONTECH trademark was already registered, used, and widely known. UDRP panels have consistently found that the registration of a domain name that is identical to a famous or widely-known trademark by an unaffiliated person or entity can by itself create a presumption of bad faith, see [WIPO Overview 3.0](#), section 3.1.4. Additionally, it is obvious to the Panel, that the Respondent has chosen the disputed domain names to target and mislead Internet users who particularly are searching for information on the Complainant and its goods and services. Consequently, the Panel has no doubt that the Respondent has registered the disputed domain names in bad faith.

With respect to the use of the disputed domain names in bad faith, as already indicated before, the disputed domain names have apparently yet not been linked to active websites. Nonetheless, and in line with the previous UDRP decisions (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)) and section 3.3 of the [WIPO Overview 3.0](#), the Panel believes that the non-use of domain names does not prevent a finding of bad faith use.

Applying the passive holding doctrine as summarized in section 3.3 of the [WIPO Overview 3.0](#), the Panel assesses the Complainant's widely-known trademark BIONTECH as sufficiently distinctive, so that any good-faith use of the Complainant's trademark in the inherently misleading disputed domain names by the Respondent appears to be inconceivable. Furthermore, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith. Also, the Panel believes that the active MX email server for the disputed domain names creates a real or implied ongoing threat to the Complainant, since the disputed domain names, even if not associated to an active website, may be used by the Respondent to mislead customers looking for the Complainant in their false belief that any email sent from the disputed domain names originates from the Complainant, likely for fraudulent activities.

All in all, the Panel cannot conceive of any plausible and legitimate use of the inherently misleading disputed domain names that would be in good faith, except with an authorization of the Complainant.

Taking these facts of the case into consideration, the Panel believes that this is a typical cybersquatting case, which the UDRP was designed to stop. The Panel therefore concludes that the disputed domain names were registered and are being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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 names, <biontech.bayern> and <biontech.technology>, be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: February 13, 2023