

ADMINISTRATIVE PANEL DECISION

bioMérieux v. cenk erdogan
Case No. D2023-2793

1. The Parties

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

The Respondent is cenk erdogan, United States of America (“US”).

2. The Domain Name and Registrar

The disputed domain name <biomerieuxvec.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 30, 2023. On June 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 4, 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 (REDACTED FOR PRIVACY, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 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 July 10, 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 July 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 10, 2023.

The Center appointed Torsten Bettinger as the sole panelist in this matter on August 28, 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 is a French company founded in 1963 and incorporated in France in 1988, leader in the field of microbiology, providing diagnostic and analysis solutions (laboratory instruments, reagents, software) which determine the source of disease and contamination to pharmaceutical industries and laboratories to improve patient health.

It is present in more than 160 countries including France where its headquarters are located, and is the owner of 43 subsidiaries around the world. The Complainant claims that its leadership in the field of *in vitro* diagnostics has been lasting for over 55 years with EUR 3.376 billion in sales.

The Complainant is making use of the name BioMérieux in relation with pharmaceuticals as its corporate name, since 1988, and also as trade name through its various subsidiaries. It is the owner of numerous trademarks registrations, including:

- International Trademark BIOMERIEUX No. 933598, registered on June 12, 2007 in classes 1, 5, 9 and 10;
- International Trademark BIOMERIEUX No. 1392389, registered on October 25, 2017 in classes 35, 37, 41, 42 and 44;
- US Trademark BIOMERIEUX No. 3906321, registered on January 18, 2011 in classes 1, 5, 9 and 10;

The Complainant is also the owner, either directly or through its subsidiaries, of several domain names formed with the name "Biomerieux" such as:

- <biomerieux.com> registered on May 31, 1996;
- <biomerieux.net>, registered on October 20, 2000
- <biomerieux.org>, registered on October 20, 2000
- <biomerieuxusa.com>, registered on April 4, 2001
- <biomerieuxkorea.com>, registered on March 15, 2006
- <biomérieux.com>, registered on April 16, 2010
- <biomerieux-culturemedia.com>, registered on December 19, 2012
- <biomerieux-estore.com>, registered on February 28, 2014.

The disputed domain name has been registered on June 25, 2023 and redirects to the Registrar's parking webpage offering it for sale at the price of EUR 23 004.01.

5. Parties' Contentions

A. Complainant

The Complainant submits that its BIOMERIEUX mark is a distinctive term.

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant argues that:

- the disputed domain name is confusingly similar to the trademark BIOMERIEUX owned by the Complainant because it integrates the trademark BIOMERIEUX in its entirety;
- the Complainant's trademark is clearly recognizable in the disputed domain name as it only differs from the registered BIOMERIEUX trademarks by the addition of the letters "vec" at the end;
- this difference does not alter the overall perception of the sign as being confusingly similar to the trademark BIOMERIEUX;
- the generic Top-Level Domain ("gTLD") may be ignored for the purpose of assessing the confusing similarity, because it only plays a technical function.

With regards to the Respondent having no rights or legitimate interests in the disputed domain name, the Complainant submits that:

- the disputed domain name does not correspond to a registered trademark or distinctive sign;
- the disputed domain name appears to be confusingly similar to the Complainant's trademark BIOMERIEUX and the Complainant has never given its consent for the Respondent to use its trademark, nor any other similar sign such as "biomerieuxvec" or <biomerieuxvec.com> in a domain name registration or in any other manner;
- the BIOMERIEUX trademark is not only distinctive and globally well known, but it is exclusively associated with the Complainant;
- the Respondent's offering of the disputed domain name for sale for EUR 23 004.01 is neither a fair or noncommercial nor a *bona fide* use of the disputed domain name in connection with goods or services, but an illegitimate commercial use through which the Respondent intends to unduly take advantage of the reputation of the Complainant's trademark for commercial gain.

Finally, with regards to the disputed domain name having been registered and being used in bad faith, the Complainant argues that:

- the trademark BIOMERIEUX is highly distinctive and exclusively related with the Complainant;
- the trademark BIOMERIEUX is extremely well known for decades;
- under the circumstances, the registration of the disputed domain name cannot be a coincidence, and the Respondent was actually fully aware of the existence of the Complainant and of its prior rights on the BIOMERIEUX trademark when he registered the disputed domain name;
- the disputed domain name redirects to a page offering it for sale at the price of EUR 23 004.01;
- such a price clearly exceeds the Respondent's out-of-pocket costs directly related to the registration of the disputed domain name;
- as the disputed domain name has been put for sale immediately after its registration it is obvious that the Respondent registered the disputed domain name with the intent to sell the disputed domain name in order to generate profit.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following elements:

- (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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns multiple trademark registrations for the mark BIOMERIEUX prior to the registration of the disputed domain name on June 25, 2023.

It is well established that the test of identity or confusing similarity under the Policy is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the trademark is used or other marketing and use factors usually considered in trademark infringement cases. (See sections 1.1.2 and 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").)

As set forth in section 1.7 of the [WIPO Overview 3.0](#): “in cases where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark.” (See, e.g., *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) (“the fact that a domain name wholly incorporates a complainant’s registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy”)).

In this case, the disputed domain name contains the Complainant’s BIOMERIEUX trademark in its entirety adding the letters “vec” at the end of the word BIOMERIEUX. The Panel considers that in spite of the addition of these letters the trademark remains recognizable in the disputed domain name.

Finally, it is well accepted in past UDRP decisions that the gTLD, such as (e.g., “.com”, “.club”, “.nyc”, “.tech” etc.), is typically not to be taken into account when assessing the issue of identity and confusing similarity, except in certain cases where the applicable gTLD may itself form part of the relevant trademark (see section 1.11 of the [WIPO Overview 3.0](#)). This practice of disregarding the gTLD in determining identity or confusing similarity is applied irrespective of the particular gTLD (including with regard to “new gTLDs”).

The Panel therefore concludes that the disputed domain name is confusingly similar to the Complainant’s BIOMERIEUX trademark in which the Complainant has exclusive rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish its rights or legitimate interests in the domain name, among other circumstances, by showing any of the following elements:

“(i) before any notice to you [the Respondent] 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 [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you [the Respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant stated that it has never given its consent for the Respondent to use its trademark in a domain name registration or in any other manner, and provided evidence that the disputed domain name redirected to the Registrar’s parking page on which the disputed domain name was offered for sale shortly after its registration at a price of EUR 23 004.01.

These assertions and evidence are sufficient to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

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 disputed 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](#).

The Respondent chose not to contest the Complainant’s allegations and has failed to come forward with any evidence to refute the Complainant’s *prima facie* showing that the Respondent lacks rights or legitimate interests. The Panel therefore accepts these allegations as undisputed facts.

From the record in this case, there is no other evidence to support the assumption that the Respondent has used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate

noncommercial or fair use. Notably, a respondent's use of a complainant's mark to redirect users would not support a claim to rights or legitimate interests.

The Panel therefore concludes that the Respondent lacks rights and legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name; or

(ii) the Respondent has registered the disputed domain name in order to prevent the owner of the trademark 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the disputed 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 Complainant holds multiple trademark registrations for the BIOMERIEUX mark in various jurisdictions that predate the registration of the disputed domain name.

Given that the Complainant's BIOMERIEUX marks are well known in many countries worldwide and the disputed domain name contains the BIOMERIEUX in its entirety, it is likely that the Respondent did not coincidentally register the disputed domain name but had knowledge of the Complainant's rights in the BIOMERIEUX marks when registering the disputed domain name.

Based on the record in this proceeding, the Panel is satisfied that the Complainant's BIOMERIEUX mark is distinctive and well known in many countries, including the United States of America where the Respondent appears to be located.

Given that the Complainant's BIOMERIEUX mark is solely connected with the Complainant and noting that the disputed domain name redirects to a website on which the disputed domain name is offered for sale at a price of EUR 23 004.01 shortly after the registration of the disputed domain name, the Panel accepts the Complainant's contention that the disputed domain name was registered to sell the disputed domain name for commercial gain.

Furthermore, the Respondent has not replied to the Complaint.

The Panel therefore finds that the circumstances, as described above, show that the Respondent's registration and use of the disputed domain name equal a bad faith registration and use and therefore the Complainant also established the third element 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, <biomerieuxvec.com>, be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: September 12, 2023