

ADMINISTRATIVE PANEL DECISION

BioNTech SE v. Alicia Berry, Biontech
Case No. DCO2024-0045

1. The Parties

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

The Respondent is Alicia Berry, Biontech, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <biontechnology.co> is registered with Key-Systems GmbH (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 2, 2024. On July 2, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 4, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 31, 2024.

The Center appointed Karen Fong as the sole panelist in this matter on August 7, 2024. 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 biotechnology company founded in 2008 based in Germany and the developer in collaboration with Pfizer of a COVID-19 vaccine during the global pandemic. The extensive publicity given to the vaccines developed to combat the deadly disease resulted in the Complainant and its BIONTECH brand becoming well-known in a short space of time.

The Complainant is the owner of a number of trademark registrations for BIONTECH including the following:

- European Union (“EU”) Trade Mark No. 008964447, BIONTECH, registered on December 22, 2010;
- EU Trade Mark No. 016241465, BIONTECH, registered on November 9, 2017; and
- United States Registration No. 5712036, BIONTECH, registered on April 2, 2019.

(individually and collectively, the “Trade Mark”).

The Complainant also owns a number of domain names comprising the trade mark including <biontech.com>, registered on May 29, 1998; <biontech.de>, registered on October 10, 2007; <biontech.info>, registered on February 27, 2009; <biontech.net>, registered on February 27, 2009; <biontech.us>, registered on May 8, 2019; <biontechcovid19.com>, registered on June 5, 2020; and, <biontechglobal.com>, registered on April 20, 2020.

The Respondent, who appears to be based in the United States, registered the disputed domain name on April 15, 2024. The website resolving from the disputed domain name is inactive, although an email server has been configured on the disputed domain name. The Complainant’s representatives sent a cease-and-desist letter to the Respondent on April 29, 2024, with follow up emails and received no response.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the disputed domain name, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussions and Finding

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for identity or confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s Trade Mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the Trade Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the term “nology” after the Trade Mark in the disputed domain name may bear on assessment of the second and third elements, the Panel finds the addition of such a term does not prevent a finding of confusing similarity between the disputed domain name and the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that the registrant organization listed in the registration of the disputed domain name is “BIONTECH”, identical to the Complainant’s corporate name and Trade Mark. However, there is no evidence in the record that the Respondent is commonly known by such term or the disputed domain name, and the Panel also notes that the disputed domain name does not identically match such term. In the circumstances of this case, the Panel finds it most likely that the Respondent has provided false registrant information in an attempt to falsely suggest an affiliation with the Complainant, which does not demonstrate any rights or legitimate interests in the disputed domain name. Moreover, the nature of the disputed domain names is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent knew or should have been aware of the Trade Mark when she registered the disputed domain name given the reputation of the Trade Mark, which was enhanced by virtue of it being highly publicized during the combatting of the global pandemic. It is therefore

more likely than not that the Respondent was unaware of the Complainant when she registered the disputed domain name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark.”

The fact that there is a clear absence of rights or legitimate interests coupled with the Respondent’s choice of the disputed domain name without any explanation is also a significant factor to consider (as stated in [WIPO Overview 3.0](#), section 3.2.1).

In the present case, the Panel notes that the disputed domain name fully incorporates the Trade Mark with the addition of the letters “nology” to the “tech” portion of the BIONTECH Trade Mark and company name, forming the term “technology”. This term is highly relevant to the Complainant and its technology business indicating that the Respondent had actual knowledge of and was targeting the Complainant and the Trade Mark when registering the disputed domain name.

The Panel also notes that the disputed domain name is inactive. Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. [WIPO Overview 3.0](#), section 3.3. Moreover, the nature of the disputed domain name, which is not only confusingly similar to the Trade Mark and is obviously targeting the Complainant is an indication of bad faith on the part of the Respondent.

Further, based on the available record, the Panel notes that a mail server has been configured on the disputed domain name.

Section 3.4 of [WIPO Overview 3.0](#) states as follows:

“Panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. (In some such cases, the respondent may host a copycat version of the complainant’s website.) Many such cases involve the respondent’s use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant’s actual or prospective customers.”

Although there is no evidence that the Respondent has actually sent phishing or fraudulent emails so far, the presence of an email server configured to the inherently misleading disputed domain name is a good indicator, in the circumstances of this case, that the disputed domain name is likely to be used to perpetuate phishing schemes or other email scams.

Having reviewed the available record, the Panel notes the reputation of the Trade Mark, the composition of the disputed domain name, the configuration of an email server on the disputed domain name, and lack of a response from the Respondent, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <biontechnology.co> be transferred to the Complainant

/Karen Fong/

Karen Fong

Sole Panelist

Date: August 19, 2024