

## **ADMINISTRATIVE PANEL DECISION**

bioMérieux v. cochran scott  
Case No. D2022-3950

### **1. The Parties**

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

The Respondent is cochran scott, United States of America.

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

The disputed domain name <biomerieux.link> is registered with Hostinger, UAB (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 21, 2022. On October 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 24, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and its 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 November 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 25, 2022.

The Center appointed Miguel B. O’Farrell as the sole panelist in this matter on December 1, 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 multinational biotechnology company, founded in 1963. Its products are mainly used for diagnosing infectious diseases and are also used for detecting microorganisms in agri-food, pharmaceutical and cosmetic products.

The Complainant owns several registrations for the trademark BIOMERIEUX (word and/or device) in many jurisdictions around the world, including the following:

International Trademark Registration No. 1392389 BIOMERIEUX, registered on October 25, 2017, in classes 35, 37, 41, 42 and 44;

International Trademark Registration No. 1478156 BIOMÉRIEUX and device, registered on June 4, 2018 in classes 1, 5, 9, 10, 35, 37, 41, 42 and 44;

European Union Trademark Registration No. 017912668 BIOMÉRIEUX and device, registered on October 20, 2018 in classes 1, 5, 9, 10, 35, 37, 41, 42 and 44;

United States Trademark Registration No. 3906321 BIOMERIEUX, registered on January 18, 2011, in classes 1, 5, 9 and 10;

United States Trademark Registration No. 5830553 BIOMERIEUX, registered on August 13, 2019, in classes 35, 37, 41, 42 and 44.

Also, the Complainant and its subsidiaries own various domain names including “biomerieux”, such as: <biomerieux.com> registered on May 31, 1996; <biomerieux.fr> registered on June 3, 1996; <biomerieux-usa.com> registered on March 31, 2000 and many others.

The disputed domain name was registered on August 9, 2022 and resolves to a Registrar’s default page.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant claims that the disputed domain name is identical to the trademark BIOMERIEUX in which the Complainant has rights and that the Respondent has no rights or legitimate interests in respect of the disputed domain name, which was registered and is being used in bad faith.

The Complainant serves more than 160 countries by means of its 43 subsidiaries around the world and through a large network of distributors. In 2021, its revenues reached EUR 3.38 billion with 90% of sales outside France.

The disputed domain name does not correspond to the name of the Respondent, who does not have any trademark rights therein and does not have the consent of the Complainant to use the trademark BIOMERIEUX in the disputed domain name or in any other manner.

The trademark BIOMERIEUX is extremely distinctive, globally well known – as acknowledged by many panels in UDRP decisions – and associated exclusively with the Complainant.

For more than 10 years many UDRP panels have steadily recognized the well-known nature of the BIOMERIEUX trademark.

The Respondent is not making any fair noncommercial or *bona fide* use of the disputed domain name, since it does not resolve to an active webpage. On the contrary, the Respondent has registered the disputed

domain name in bad faith.

As showed in the Complaint, MX records have been set up on the disputed domain name, which means that the Respondent may use the disputed domain name to send fraudulent emails such as messages containing spam, or fishing attempts for instance.

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (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 was registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel is satisfied that the Complainant has proven to have rights in the BIOMERIEUX trademark.

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar to the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is identical to the Complainant's BIOMERIEUX trademark.

The disputed domain name incorporates the Complainant's trademark BIOMERIEUX in its entirety with the addition of the new generic Top-Level Domain (gTLD) ".link", which is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11.1 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is identical to the trademark BIOMERIEUX in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out the following several circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to or legitimate interests in a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

- the respondent (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if the respondent has acquired no trademark or service mark rights; or
- the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has proven that it is the owner of the BIOMERIEUX mark. There is no indication that it has licensed or otherwise permitted the Respondent to use any of its trademarks, nor has it permitted the Respondent to apply for or use the disputed domain name incorporating its mark.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein. The name of the Respondent does not resemble the disputed domain name in any manner.

Furthermore, there is no evidence in the case file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other element to prove that the Respondent has legitimate interests or that it has established rights in the disputed domain name.

As established in section 2.5 of [WIPO Overview 3.0](#): “Fundamentally, a respondent’s use of a domain name will not be considered ‘fair’ if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry.” In this case, the Panel considers that the disputed domain name carries a high risk of implied affiliation with the Complainant and the Complainant’s BIOMERIEUX mark.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

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

As acknowledged by previous panels in UDRP cases, the trademark BIOMERIEUX has a distinctive character, is well known worldwide and has a significant amount of goodwill attached to it.

The Panel is satisfied that the Respondent must have been aware of the Complainant’s BIOMERIEUX trademark when it registered the disputed domain name on August 9, 2022.

The Respondent when registering the disputed domain name was targeting the Complainant and its business by incorporating the trademark BIOMERIEUX, which leads Internet users to think that the website to which the disputed domain name resolves is the official website of the Complainant and thereby capitalize on the fame of the BIOMERIEUX trademark for its own monetary benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent’s choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered and is being used in bad faith, as stated in section 3.2.1 of [WIPO Overview 3.0](#).

Pursuant to section 3.3 of [WIPO Overview 3.0](#), the fact that the disputed domain name does not resolve to an active webpage at the time of the submission of the Complaint and at the time of writing this Decision does not prevent a finding of bad faith under the doctrine of passive holding. See *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

For the above reasons, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy have been fulfilled.

## **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, <biomerieux.link>, be transferred to the Complainant.

*/Miguel B. O'Farrell/*

**Miguel B. O'Farrell**

Sole Panelist

Date: December 15, 2022