

ADMINISTRATIVE PANEL DECISION

bioMérieux v. Beverly Papuchis, cabot oil and gas
Case No. D2022-4246

1. The Parties

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

The Respondent is Beverly Papuchis, cabot oil and gas, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <biomereux.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2022. On November 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 9, 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 November 10, 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 November 15, 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 November 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 7, 2022.

The Center appointed James Bridgeman as the sole panelist in this matter on December 15, 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 manufacturer and supplier of biomedical products and is the owner of a large international portfolio of trademark and service mark registrations for the BIOMERIEUX mark.

- International Trademark BIOMERIEUX registration number 1392389, registered on October 25, 2017 for services in classes 35, 37, 41, 42, and 44;
- International Trademark BIOMÉRIEUX registration number 1478156, registered on June 4, 2018, for services in classes 1, 5, 9, 10, 35, 37, 41, 42, and 44;
- European Union trademark BIOMÉRIEUX registration number 017912668, registered on October 20, 2018, for services in classes 1, 5, 9, 10, 35, 37, 41, 42, and 44;
- French registered trademark BIOMÉRIEUX registration number 4416795, filed on January 3, 2018 for goods and services in classes 1, 5, 9, 10, 35, 37, 41, 42, and 44;
- United States registered trademark BIOMERIEUX, registration number 3906321, registered on January 18, 2011 for goods in international classes 1, 5, 9, and 10; and
- United States registered service mark BIOMERIEUX, registration number 5830553, registered on August 13, 2019 for services in international classes 35, 37, 41, 42, and 44.

The Complainant has an established Internet presence, and together with its subsidiaries, owns a large portfolio of Internet domain names that incorporate the term “biomerieux” alone or combined with other elements, including <biomerieux.com> which was registered on May 31, 1996.

The disputed domain name was registered on October 24, 2022, and resolved to a parking page maintained by the Registrar with what appears to have links to categories of third party websites.

There is no information available about the Respondent, except for that provided in the Complaint, the Registrar’s Whols and the information provided by the Registrar in response to the request by the Center, for the purpose of this proceeding, for details of the registration of the disputed domain name.

5. Parties’ Contentions

A. Complainant

The Complainant claims rights in the BIOMERIEUX trademark and service mark relying on its ownership of the portfolio of registrations described above, and the extensive use of the mark, by itself and its subsidiaries in its biomedical supplies and diagnostics services business.

The Complainant alleges that the disputed domain name is identical or confusingly similar to its BIOMERIEUX mark, as it reproduces the BIOMERIEUX, trademark in its entirety, with a single modification, that the second vowel “i” has been moved so, that the last three vowels “ieu” are discretely reversed into “eui”, at the end of the sign.

The Complainant argues that this slight difference produces a very limited impact, and does not alter at all the overall perception of the disputed domain name which remains extremely similar to the BIOMERIEUX mark and the difference is almost unnoticeable.

The Complainant adds that the disputed domain name reproduces all the letters of the BIOMERIEUX mark, in the same order and position, with the exception of the second letter “i”, as explained above. The element “biomereuix” does not have any specific meaning or connotation that could reduce the impact of its similarity with the trademark.

The Complainant further submits that it is well-established in case-law, that the generic Top-Level Domain (“gTLD”) extension “.com” may be ignored for the purpose of assessing confusing similarity, because it plays only a technical function and the relevant comparison to be made is with the second-level part of the

disputed domain name, specifically: “biomereuix”. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), Section 1.11.1.

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name, arguing that the disputed domain name is confusingly similar to the Complainant’s BIOMERIEUX trademark which is intrinsically extremely distinctive, globally well-known and exclusively associated with the Complainant, and adds that the Complainant has never given its consent for the Respondent to use its mark, nor any other similar sign such as BIOMEREUIX or <biomereuix.com> in a domain name registration or in any other manner.

A search on the Google search engine for the sign “BIOMEREUIX”, which is exhibited in evidence in an annex to the Complaint, solely and exclusively provides results relating to the Complainant’s BIOMERIEUX mark, and the search engine even suggests that the user has included a typographic error when introducing “biomereuix”, and proposes conducting the search directly over “biomereuix”.

The Complainant adds that, even as the Respondent is anonymous, the Complainant does not believe that it owns any legitimate rights on the term “biomereuix”. Indeed, this word does not correspond to a registered trademark, or to a company or trade name, as evidenced by the results of a search for the term “biomereuix” conducted on November 4, 2022 on the database of trademarks and other distinctive signs SAEGIS, which is exhibited as evidence in an annex to the Complaint. The Complainant explains that the search was performed on all registries available worldwide.

The Complainant submits that as a consequence, there can be absolutely no legitimate reason for the Respondent to hold the disputed domain name.

Additionally, the Complainant contends the disputed domain name is not used in any type of legitimate business or services, because, as shown in a screen capture exhibited in evidence in an annex to the Complaint, it resolves to a parking page displaying pay-per-click advertisements.

The Complainant argues that such commercial use of the disputed domain name cannot constitute a *bona fide* offering of goods or services because, it capitalizes on the reputation and goodwill of the Complainant’s mark. See [WIPO Overview 3.0](#), section 2.9.

The Complainant adds that because the difference between the disputed domain name and the Complainant’s mark is almost imperceptible, its use carries a high risk of implied affiliation with the Complainant, and effectively impersonates or suggests sponsorship or endorsement by the Complainant, which cannot constitute fair use, see [WIPO Overview 3.0](#), section 2.5.1.

The Complainant next alleges that the disputed domain name was registered and is being used in bad faith, arguing that the BIOMERIEUX mark is very well-known because the Complainant is a global leader in the field of microbiology and diagnostics, with a presence in more than 160 countries, by means of its 43 subsidiaries around the world, and in 2021, its revenues reached EUR 3.38 billion with 90% of sales outside of France.

The Complainant adds that its BIOMERIEUX mark is a highly distinctive, fanciful designation and is exclusively related with the Complainant, and, to the best of the Complainant’s knowledge, it does not constitute an existing dictionary word, nor even a suggestive term.

In such circumstances, the Complainant argues, the registration of the disputed domain name could not 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. Therefore, the choice of the disputed domain name cannot be reasonably explained otherwise than as a reference to the Complainant and to its trademark.

The Complainant further submits that the disputed domain name only make sense because of its high degree of closeness to the Complainant's rights. In other words, the only *raison d'être* of the disputed domain name is its almost identity with the BIOMERIEUX well-known trademark.

It is also contended that the disputed domain name is composed of a misspelling of the Complainant's mark and panels established under the Policy have frequently held that the incorporation of a well-known trademark, or of a typo of the latter, into a domain name tends to support a finding of bad faith registration and use. See *CSC Brands LP v. Shen Zhong Chao*, WIPO Case No. [D2018-2485](#): "Registration of a domain name that incorporates a complainant's well-known trademark by someone with no connection with the trademark suggests opportunistic bad faith."

Addressing the allegation that the disputed domain name, is being used in bad faith, the Complainant refers to the exhibited screen capture which shows that it is being used as the address of a web page with pay-per-click links and submits that such use constitutes bad faith for the purposes of the Policy. See the section 3.5 of [WIPO Overview 3.0](#), which states: "Particularly with respect to "automatically" generated pay-per-click links, panels have held that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third party such as a registrar or auction platform (or their affiliate), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith."

The Complainant acknowledges that it is likely that the websites linked to the pay-per-click page are likely to be automatically generated, but argues that it does not matter because it is well established that consumers, once arriving at this website, are invited to follow the provided links and click through to third-party sites.

The Complainant further alleges that mail exchange ("MX") records have been set up on the disputed domain name as shown in DNS Record Look-up, exhibited in an annex to the Complaint and argues that as a consequence, the Respondent can send emails through the email address "[...][@biomereux.com](#)", and therefore may use the disputed domain name to send fraudulent emails such as messages containing spam, or phishing attempts for instance. Previous decisions issued by UDRP panels have already considered that the use of MX records, showing that the respondent may use the domain name actively in the future for email correspondence, together with the reputation of the complainant's trademarks, is considered to be indicative of bad faith use of the domain name. For instance, see *Association des Centres Distributeurs E. Leclerc v. Registration Private, Domains By Proxy, LLC / Quentin Leclerc*, WIPO Case No. [D2018-1185](#): "[...] the Panel checked the mail exchanger records ("MX records") of the Domain Name and found that it had been set up to send and receive email. The Panel finds that this is another indication that the Respondent's intentions were not in good faith, as any emails sent using the Domain Name would certainly be confusing and unlikely to be linked to a legitimate purpose."

The Complainant adds that the Respondent has not only set up MX servers, but additionally a Sender Policy Framework ("SPF") record, also shown in an annex to the Complaint, shows that the SPF record allows the receiving mail server to check, during mail delivery, that a mail (incoming from a specific domain name) is submitted by an IP address and/or email server authorized by that domain name's administrators.

If, as mentioned above, the fact that MX records are configured with the disputed domain name, entails the possibility that the Respondent is using, or plans to use, the fact that there is also a SPF record squarely evidences that the Respondent genuinely plans (assuming that not already done) to use the disputed domain name to send emails. See *American Society of Hematology, Inc. v. Domain Admin, Privacy Protect, LLC (PrivacyProtect.org) / Pranaey H*, WIPO Case No. [D2021-1381](#).

In conclusion, the Complainant adds that because the Complainant is engaged in the biomedical and diagnostics industry a fraudulent use of the disputed domain name would be extremely damageable: not only for the Complainant, but also for the victims, in particular if they are patients.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires the Complainant to establish 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 has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has provided convincing, uncontested evidence that it has rights in the BIOMERIEUX trademark and service mark, established by its ownership of the portfolio of trademark registrations described above and its long established use of the mark to distinguish its products and services in its biomedical and diagnostics business including on its website at "www.biomerieux.com".

The disputed domain name is composed of the Complainant's BIOMERIEUX mark modified by moving the letter "i", so that the last syllable in the disputed domain name "ieux" becomes "euix", in combination with the gTLD extension ".com".

As the Complainant convincingly argues, the slight difference created by moving the letter "i" to a different position within the last syllable in the disputed domain name, makes a very limited, and almost imperceptible impact, and does not alter at all the overall perception of the disputed domain name which remains extremely similar to the BIOMERIEUX mark.

The difference between the Complainant's mark and the disputed domain name is likely to go unnoticed by Internet users or be perceived as a misspelling of the BIOMERIEUX mark and does not prevent a finding that the disputed domain name is confusingly similar to the Complainant's mark.

In the context of the disputed domain name, the gTLD would be perceived to be a necessary technical element for a domain name.

This Panel finds therefore that the disputed domain name is confusingly similar to the BIOMERIEUX mark in which the Complainant has rights and the Complainant has therefore succeeded in the first element of the test in Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent has no rights legitimate interests in the disputed domain name arguing that:

- the disputed domain name is confusingly similar to the Complainant's BIOMERIEUX trademark which is intrinsically extremely distinctive, globally well-known and exclusively associated with the Complainant;
- the Complainant has never given its consent for the Respondent to use its mark, nor any other similar sign such as BIOMEREUIX in a domain name registration or in any other manner;
- the exhibited result from the search on the Google search engine for the sign "BIOMEREUIX", solely and exclusively provides results relating to the Complainant's trademark BIOMERIEUX mark, and the

- search engine even suggests that the user has included a typographic error when introducing “biomereuix”, and propose conducting the search directly over “biomerieux”;
- the term “biomereuix” does not correspond to a registered trademark, or to a company or trade name, as evidenced by the results of a search all registries available worldwide for the term “biomereuix” conducted on November 4, 2022 on the database of trademarks and other distinctive signs SAEGIS, which is exhibited as evidence in an annex to the Complaint and as consequence, there can be absolutely no legitimate reason for the Respondent to hold the disputed domain name;
 - as shown in a screen capture exhibited in evidence in an annex to the Complaint, the disputed domain name resolves to a parking page displaying pay-per-click advertisements which cannot constitute a *bona fide* offering of goods or services because, it capitalizes on the reputation and goodwill of the Complainant’s mark; and
 - because the difference between the disputed domain name and the Complainant’s mark is almost imperceptible, its use carries a risk of implied affiliation with the Complainant, and therefore cannot constitute fair use, as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

It is well established that once a complainant makes out a *prima facie* case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden, therefore this Panel must find that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore succeeded in the second element of the test in Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant has adduced clear and convincing, and uncontested evidence that it holds established rights in the BIOMERIEUX mark which long predate the registration of the disputed domain name on October 24, 2022 and its international reputation is so strong that in 2021, the year preceding the registration of the disputed domain name the Complainant’s revenues reached EUR 3.38 billion with 90% of sales outside of France.

It is improbable therefore that the disputed domain name which is so similar to the Complainant’s BIOMERIEUX mark was chosen and registered without any knowledge of the Complainant, its name, its mark, its rights in the mark and its pre-existing <biomerieux.com> domain name which was registered on May 31, 1996, and is used by the Complainant as the address of its website at “www.biomerieux.com”.

This Panel finds that on the balance of probabilities the registrant chose and registered as a misspelling of the Complainant’s MIOMERIEUX mark, in an act of typosquatting, with the intention of taking predatory advantage of the Complainant’s reputation and goodwill, which constitutes bad faith under the Policy.

Given the long and extensive reputation and goodwill of the Complainant’s BIOMERIEUX mark that the Complainant has established by extensive use, including on the Internet; additionally, because there is nothing on the record to suggest that the Respondent has any business whatsoever, or any plausible legitimate reason for registering or using the disputed domain name; and also because, on the balance of probabilities, the choice and registration of the disputed domain name, which is a misspelling of the Complainant’s mark, constitutes an act of typosquatting; this Panel finds that the passive holding of the disputed domain name by the Respondent, constitutes use of the disputed domain name in bad faith for the purposes of the Policy.

Such typosquatting is, in itself, sufficient to find that the disputed domain name was registered and is being used in bad faith.

Furthermore, while the evidence before this Panel allows a finding that the disputed domain name is passively held constituting bad faith registration and use, it is of great concern that the MX record and the SPF record shows that the disputed domain name has been configured to support email correspondence in circumstances where the disputed domain name is, on the balance of probabilities, an intentional misspelling of the Complainant's name and mark, and it is implausible that the Respondent can put the disputed domain name to any legitimate use.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, the Complainant has succeeded in the third element of the Policy, paragraph 4(a)(iii).

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 <biomereuix.com> be transferred to the Complainant.

/James Bridgeman/

James Bridgeman

Sole Panelist

Date: December 28, 2022