

ADMINISTRATIVE PANEL DECISION

bioMérieux v. Pater Parker2

Case No. D2022-4595

1. The Parties

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

The Respondent is Pater Parker2, United States of America ("United States").

2. The Domain Name and Registrar

The disputed domain name <biomeriuax.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 December 1, 2022. On December 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 2, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 5, 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 8, 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 December 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 3, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 13, 2023.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on January 20, 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 multinational biotechnology company, based in France with a presence in more than 160 countries, active in the field of diagnostic solutions.

The Complainant is the owner of the following trademark registrations for BIOMERIEUX:

- United States trademark registration No. 3906321, registered on January 18, 2011, in Classes 1, 5, 9, and 10; and
- International trademark registration No. 1392389, registered on October 25, 2017, in Classes 35, 37, 41, 42, and 44.

The Complainant has also registered the domain name <biomerieux.com> in 1996.

The disputed domain name was registered on November 22, 2022. At the time of filing of the Complaint, the disputed domain name resolved to a parking page.

5. Parties' Contentions

A. Complainant

According to the Complainant, the disputed domain name is confusingly similar to its BIOMERIEUX registered trademark as it identically reproduces its trademark with two slight modifications, namely: 1) the letter "e" was substituted by the very visually similar letter "a"; and 2) the inversion of the two last vowels.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (i) the Respondent is not commonly known by the disputed domain name; (ii) the Respondent is not affiliated nor authorized by the Complainant in any way; specifically no license nor authorization has been granted to the Respondent to make any use of the Complainant's trademarks, or apply for registration of the disputed domain name; and (iii) the disputed domain name resolves to a parking page, which confirms that the Respondent has failed to use the disputed domain name for a *bona fide* offering of goods and services.

Finally, the Complainant contends that the Respondent has used and registered the disputed domain name in bad faith. According to the Complainant, the Respondent was aware of the existence of the Complainant and of its trademark when it registered the disputed domain name. The Complainant further asserts that the Respondent has used or is using the disputed domain name for the purpose of generating pay-per-click ("PPC") revenue from the diversion of Internet users, a behavior amounting to registration and use in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent 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 domain name; and
- (iii) the domain name registered by the respondent has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name incorporates entirely the Complainant's BIOMERIEUX trademark. The difference lies in the replacement of the letters "eu" by the letters "ua" in the last syllable.

Despite this difference, it is the Panel's view that the trademark BIOMERIEUX is recognizable in the disputed domain name. The misspelling of the last syllable does not change the overall impression produced by the disputed domain name and is not sufficient to prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark (see, for example, *DPDgroup International Services GmbH & Co. KG v. Whois Privacy Protection Foundation / Aurelius Mark*, WIPO Case No. [D2019-3141](#)).

UDRP panels also accept that a generic Top-Level Domain ("gTLD"), such as ".com", may be disregarded when assessing whether a domain name is identical or confusing similar to a trademark (see section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds accordingly that the Complainant has successfully established the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has failed to file a response.

Based on the information submitted by the Complainant, the Respondent does not appear to have rights or legitimate interests in respect of the disputed domain name, nor has the Complainant granted to the Respondent an authorization to use its trademark in the disputed domain name.

No evidence suggests that the Respondent was using or was making demonstrable preparations to use the disputed domain name in connection with any type of *bona fide* offering of goods or services. Instead, the Respondent used the disputed domain name in connection with a website containing PPC links to third-party websites. Given the typo squatting nature of the disputed domain name, it is apparent that the Respondent sought to mislead unsuspecting Internet users expecting to find the Complainant and unaware of the typographical variation in the disputed domain name as compared to the Complainant's trademark, for the ultimate commercial benefit of the Respondent given the presumed click-through revenue derived from such misled Internet traffic. Accordingly, the Respondent's use of the disputed domain name does not constitute noncommercial fair use.

Finally, the Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b). The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel finds that the Respondent's silence corroborates the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Panel rules that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Complainant has satisfied the condition set out in paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDRP panels have recognized in past decisions the widespread use and renowned character of the Complainant's trademarks (see *bioMérieux v. Robert Sloan*, WIPO Case No. [D2019-2865](#), and *bioMérieux v. WhoisGuard Protected, WhoisGuard, Inc. / John Martine*, WIPO Case No. [D2020-0399](#)). Considering the distinctiveness and reputation of the Complainant's BIOMERIEUX trademark, the Panel accepts that the Respondent most probably knew of the Complainant's trademark when it registered the disputed domain name.

Furthermore, the disputed domain name has no meaning of its own and appears to be a deliberate misspelling of the Complainant's trademark. This strongly suggests that the Respondent hoped to take advantage of typographic errors of Internet users looking for the Complainant's website. This also supports a finding of registration in bad faith in the Panel's view.

In addition, the presence of sponsored links to third party websites on the page to which the disputed domain name resolves supports a finding of use in bad faith. Indeed, the redirection to a webpage with sponsored links suggests an intention on the part of the Respondent to exploit and profit from the Complainant's trademark, by attempting to generate financial gains by means of "click through" revenues. Such conduct constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(b)(iv) of the Policy (see *F. Hoffmann-La Roche AG v. James Lee*, WIPO Case No. [D2009-1199](#); *Scania CV AB v. Michael Montrief*, WIPO Case No. [D2009-1149](#); *Aspen Holdings Inc. v. Rick Natsch, Potrero Media Corporation*, WIPO Case No. [D2009-0776](#); and *AllianceBernstein LP v. Texas International Property Associates*, WIPO Case No. [D2008-1230](#)).

For the reasons set out above, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith, and that the Complainant has satisfied the condition set forth in 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 name <biomeriuax.com> be transferred to the Complainant.

Anne-Virginie La Spada
Anne-Virginie La Spada
Sole Panelist
Date: February 3, 2023