

## **ADMINISTRATIVE PANEL DECISION**

BioNTech SE v. Marcos Alonso

Case No. D2022-4904

### **1. The Parties**

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

The Respondent is Marcos Alonso, Spain.

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

The disputed domain name <biontech-inv.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 21, 2022. On December 21, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 22, 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 January 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 January 6, 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 January 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 31, 2023.

The Center appointed Knud Wallberg as the sole panelist in this matter on February 13, 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 was founded in 2008 and is a biotechnology focusing on developing cancer therapeutics, including individualized immunotherapy, as well as vaccines for infectious diseases, including Covid-19, together with the US pharmaceutical company Pfizer.

The Complainant holds several registrations of the trademark BIONTECH including, *inter alia*, European Union Trademark No. 008964447 for BIONTECH, registered on December 22, 2010, in International Classes 1, 5, 42, and 44. The Complainant also holds a number of domain names comprising the mark BIONTECH including <biontech.com>.

The disputed domain name was registered on February 24, 2022, and it currently resolves to an inactive webpage. The disputed domain name previously resolved to a website impersonating the Complainant and providing information about the Covid-19 vaccine. The website also provided the option for Internet users to make investments in vaccine development.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts that the disputed domain name is confusingly similar to the trademark BIONTECH in which the Complainant holds rights. The Complainant's BIONTECH trademark is thus clearly recognizable within the disputed domain name, and the addition of term "inv", which, in accordance with content of the website to which disputed domain name used to resolve, should reasonably be understood as an abbreviation for "investment" cannot prevent the finding of confusing similarity between the disputed domain name and the Complainant's BIONTECH trademark.

The Complainant further asserts that the Respondent, who is not commonly known by the name BIONTECH, is not affiliated with the Complainant in any way and has not been authorized by the Complainant to use and register its trademark or to seek registration of any domain name incorporating the BIONTECH mark. The Respondent did not demonstrate use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services – on the contrary, since the disputed domain name used to resolve to a fraudulent website impersonating the Complainant – nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant finally asserts that the disputed domain name was registered and is being used in bad faith. The fact that the Complainant's mark is widely known makes it implausible that the Respondent was unaware of the Complainant when he registered the disputed domain name. The disputed domain name has been used for a fraudulent website impersonating the Complainant and the Complainant's BIONTECH trademark, which in accordance with the previous UDRP practice is a clear indicator for use of the disputed domain name in bad faith. The fact that the disputed domain name currently resolves to an inactive page does not preclude a finding of bad faith, since passive holding of a disputed domain name can satisfy the requirements of paragraph 4(a)(iii) of the Policy.

##### **B. Respondent**

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

## 6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

- (i) that 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) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name have been registered and is being used in bad faith.

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

### A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar (in the sense of the Policy) to the Complainant's registered trademark BIONTECH, since the disputed domain name contains this mark in its entirety. The addition of the term "-inv" does not prevent confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The generic Top-Level-Domain ("gTLD") ".com" is a standard registration requirement and as such is disregarded under the first element confusing similarity test. See section 1.11.1 of the [WIPO Overview 3.0](#).

The Panel finds that the conditions in paragraph 4(a)(i) of the Policy are therefore fulfilled in relation to the disputed domain name.

### B. Rights or Legitimate Interests

It is obvious from the Complaint, that the Complainant has not licensed or otherwise permitted the Respondent to use the trademark BIONTECH.

Further, given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has not rebutted this. Furthermore, the way the Respondent has used the confusingly similar disputed domain name for a website that clearly impersonated the Complainant and on which Internet users were purportedly provided the option to invest in vaccine development, the Complainant's business sector, supports a finding that the Respondent lacks rights or legitimate interests in the disputed domain name. Consequently, the Panel finds that the conditions in paragraph 4(a)(ii) of the Policy are also fulfilled.

### C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the complainant to prove both registration and use of a domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances, which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that

complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

- (ii) the respondent has registered the 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 domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, including the well-known status of the Complainant's trademark BIONTECH and the way that the disputed domain name has been used, it is obvious to the Panel in the current circumstances that the Respondent registered the disputed domain name in bad faith.

The disputed domain name has been used for a website, which clearly gave the Internet users the impression that the website was a website of the Complainant or a website that was somehow connected to the Complainant, which was not the case. The Panel therefore finds that there can be no doubt that the disputed domain name has been used in bad faith to intentionally attempt "to attract, for commercial gain, Internet users to the Respondent's 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". The fact that the website is unavailable at present does not alter this finding.

Noting that the disputed domain name incorporates the Complainant's well-known trademark BIONTECH; that the Respondent has not replied to the Complainant's contentions; and that there appears to be no conceivable good faith use that could be made by the Respondent of the disputed domain name and considering all the facts and evidence of the case, the Panel finds that the requirements of paragraph 4(a)(iii) of the Policy are also fulfilled in this case.

## **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, <biontech-inv.com>, be transferred to the Complainant.

*/Knud Wallberg/*

**Knud Wallberg**

Sole Panelist

Date: March 6, 2023