

## **ADMINISTRATIVE PANEL DECISION**

bioMérieux v. Ejima okoro

Case No. D2023-2010

### **1. The Parties**

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

Respondent is Ejima okoro, Thailand.

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

The disputed domain name <biormerieux.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 May 5, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 5, 2023, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on May 12, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 15, 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 Respondent of the Complaint, and the proceedings commenced on May 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 20, 2023.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on June 26, 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

Complainant is a company organized under the laws of France that is active in the biotechnological industry.

Complainant has provided evidence that it is the registered owner of numerous trademarks relating to Complainant's company name and brand BIOMERIEUX, including the following:

- word mark BIOMERIEUX, International trademark registration (WIPO), registration number: 933598, registration date: June 12, 2007, status: active;
- word mark BIOMERIEUX, Thailand trademark registration (Department of Intellectual Property Thailand), registration number: 290533, registration date: December 12, 2008, status: active.

Moreover, Complainant has demonstrated to own various domain names relating to its BIOMERIEUX trademark, including as from 1996 the domain name <biomerieux.com> which resolves to Complainant's main website at "www.biomerieux.com", promoting Complainant's biotechnological products and services worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of Thailand who registered the disputed domain name on April 25, 2023. By the time of the rendering of this decision, the disputed domain name resolves to a default website with no relevant content. Complainant, however, has demonstrated that, at some point before the filing of the Complaint, the disputed domain name resolved to a typical Pay-Per-Click ("PPC") website exclusively displaying sponsored links, some of which were promoting activities competing with those of Complainant in the biotechnological industry.

Complainant requests that the disputed domain name be transferred to Complainant.

#### 5. Parties' Contentions

##### A. Complainant

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

Notably, Complainant contends that it was founded back in 1963 and is nowadays serving more than 160 countries by means of its 43 subsidiaries around the world, with its leadership in the field of in-vitro diagnostic having lasted for over 55 years and its BIOMERIEUX trademark having meanwhile acquired well-known character.

Complainant submits that the disputed domain name is confusingly similar to Complainant's BIOMERIEUX trademark as it reproduces the latter entirely, with a single slight modification by adding the letter "r". Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) the term "biormerieux" apparently does not correspond to a registered trademark or distinctive sign, (2) Complainant has never given its consent for Respondent to use its BIOMERIEUX trademark or any other similar sign in a domain name registration or in any other manner, (3) Complainant's BIOMERIEUX trademark is intrinsically extremely distinctive, globally well-known and exclusively associated with Complainant, and (4) the disputed domain name resolves to a parking page exclusively displaying sponsored links, some even promoting activities competing with Complainant. Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Complainant's BIOMERIEUX trademark is intrinsically extremely distinctive, globally well-known and exclusively associated with Complainant, which is why the choice of the disputed domain name cannot be reasonably explained otherwise than as a reference to Complainant and its BIOMERIEUX trademark, (2) the addition of a single letter "r" constitutes a clear-cut case of typo-squatting, (3) the disputed domain name resolves to a parking page exclusively containing sponsored links, and (4) MX records have been set up on

the disputed domain name allowing Respondent to send emails thereunder, such as messages containing spam, or making other phishing attempts.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) that Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

### **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 confusing similarity involves a reasoned but relatively straightforward comparison between Complainant's BIOMERIEUX trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1

The Panel finds the entirety of the BIOMERIEUX trademark is reproduced within the disputed domain name, simply added by a letter "r" between the components "bio" and "merieux", constituting a typical typo-squatting. Accordingly, the disputed domain name is confusingly similar to the BIOMERIEUX trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 Respondent may demonstrate rights or legitimate interests in the disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP 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 Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

before any notice to Respondent of the dispute, Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.

Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.

Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

the record contains no other factors demonstrating rights or legitimate interests of Respondent in the disputed domain name.

In particular, given that the disputed domain name consists entirely of Complainant's undisputedly well-known BIOMERIEUX trademark (albeit a deliberate misspelling constituting typo-squatting), the disputed domain name is intentionally misleading and, therefore, carries, as such, the high risk of implied affiliation with this trademark ([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.

The Panel considers that the record of this case reflects that:

Respondent has intentionally attempted to attract, for commercial gain, Internet users to its own PPC website or other on-line location, by creating a likelihood of confusion with Complainant's BIOMERIEUX trademark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

In particular, the Panel recognizes that the disputed domain name is an obvious and intentional typo-squatted version of Complainant's undisputedly well-known BIOMERIEUX trademark which, in turn, is a clear indication that Respondent registered the disputed domain name in full knowledge of said trademark. This is even more true when also taking into account that, at some point before the filing of the Complaint, the disputed domain name resolved to a typical PPC website which showed search results related to Complainant and its biotechnological business. Such circumstances are clear indications of Respondent's acting in bad faith.

In connection with this finding, it also carries weight in the eyes of the Panel that Respondent obviously provided false or incomplete contact information in the WhoIs register for the disputed domain name since, according to the email correspondence between the Center and the postal courier DHL, the Written Notice

on the Notification of Complaint dated May 16, 2023, could not be delivered due to a faulty address. This fact at least throws a light on Respondent's behavior which supports the Panel's bad faith finding.

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 <biormerieux.com> be transferred to Complainant.

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: July 10, 2023