

## ADMINISTRATIVE PANEL DECISION

bioMérieux v. shilei

Case No. D2023-3131

### 1. The Parties

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

The Respondent is shilei, China.

### 2. The Domain Name and Registrar

The disputed domain names <biomerieuxbenefits.com>, <mybiomerieuxbenefit.com>, <mybiomerieuxbenfits.com>, <mybiomerieuxbenifits.com> are registered with Dynadot, LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 20, 2023. On July 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 24, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for Privacy, Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 29, 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 July 31, 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 August 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Parties of the Respondent’s default on August 24, 2023.

The Center appointed Ingrida Karina-Berzina as the sole panelist in this matter on August 30, 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 French multinational biotechnology company active in the field of diagnostic solutions. Its products are used for diagnosing infectious diseases and for detecting microorganisms in agri-food, pharmaceutical and cosmetic products. It was founded in 1963, serves more than 160 countries, by means of its 43 subsidiaries around the world, and through a large network of distributors. The Complainant is listed on the NYSE Euronext Paris Stock exchange and reports over EUR 3 billion in sales.

The Complainant is the proprietor of trademark registrations for its BIOMERIEUX mark in jurisdictions around the world, including International Trademark No. 933598 for BIOMERIEUX (word mark), registered on June 12, 2007 for goods in classes 1, 5, 9, and 10, designating numerous countries, including China.

The Complainant owns several domain names incorporating its BIOMERIEUX mark and operates a website at the domain name <biomerieux.com> (registered on May 31, 1996).

The disputed domain names were registered on July 14, 2023. At the time of this Decision, they resolved to a website featuring pay-per-click (“PPC”) links related to cosmetics and nutritional supplements. The record reflects that they previously also resolved to a page featuring a “security alert” offering to scan Internet users’ devices for viruses, and a purported offering to purchase McAfee anti-virus software. The record reflects that email exchange (“MX”) records have been configured for the disputed domain names.

No information is available about the Respondent.

#### **5. Parties’ Contentions**

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

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

Notably, the Complainant contends that the dispute domain names differ from the Complainant’s registered BIOMERIEUX mark only by the addition of the prefix “my” and the generic word “benefits” or a misspelled version thereof.

The Respondent is not known by the disputed domain names and the Complainant does not believe that it has legitimate rights therein. The disputed domain names randomly resolve to a parking page containing PPC links related to the Complainant’s business or to a website informing Internet users that his/her computer is infected and inviting them to click on a button for an alleged antivirus analysis. The Complainant’s marks have been in use since the 1980s and have become well-known in the medical field, and are registered in China, where the Respondent is domiciled. The configuration of MX records indicates that the Respondent has prepared to send fraudulent emails. The Respondent appears to hold several domain names that are confusingly similar to third parties’ well-known trademarks, including those of Google and Clash of Clans. The Respondent has been named in dozens of UDRP proceedings, where he or she was found to have engaged in cybersquatting. The address provided by the Respondent appears to be inaccurate, as it does not exist in the city of Shengzhou.

## B. Respondent

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

## 6. Discussion and Findings

Paragraph 4(a) of the UDRP requires the Complainant to make out all three of the following:

- (i) the disputed domain names are 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 names; and
- (iii) the Respondent has registered and is using the disputed domain names in bad faith.

### 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 the Complainant's 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 the 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 mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "my," "benefit," "benefits," "benefits" and "benefits") may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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

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

demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The Panel finds that the use of the disputed domain names (which comprise the Complainant's mark, together with descriptive terms or misspellings thereof) to resolve to a PPC website such as the one used by the Respondent does not represent a *bona fide* offering as the links compete with or capitalize on the reputation and goodwill of the Complainant's mark. See [WIPO Overview 3.0](#), section 2.9.

Further, panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case, the Panel notes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant's mark. The configuration of MX records for the disputed domain names indicates preparations to send fraudulent emails. The Panel notes that a person using the same name has been named in numerous UDRP proceedings.

Moreover, Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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 names <biomerieuxbenefits.com>, <mybiomerieuxbenefit.com>, <mybiomerieuxbenfits.com>, and <mybiomerieuxbenifits.com> be transferred to the Complainant.

*/Ingrīda Kariņa-Bērziņa/*  
**Ingrīda Kariņa-Bērziņa**  
Sole Panelist  
Date: September 13, 2023