Decision for dispute CAC-UDRP-102863

Case number	CAC-UDRP-102863
Time of filing	2020-01-20 10:05:25
Domain names	biodermaevent.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	NAOS

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Ian Chu

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns the following trademarks:

- the International trademark BIODERMA® n° 267207 registered since 19 March 1963;

- the International trademark BIODERMA® n° 510524 registered since 9 March 1987;

- the International trademark BIODERMA® n° 678846 registered since 13 August 1997; and

- the European trademark BIODERMA® n°003136892 registered since 15 April 2003;

("Complainant's Trademarks").

The disputed domain name <biodermaevent.com> was registered on 15 November 2019.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) Founded in France 40 years ago by Jean-Noël Thorel, a pharmacist-biologist, NAOS is a major player in skincare thanks to its three brands: Bioderma, Institut Esthederm and Etat Pur. Ranked among the top 10 independent beauty companies, NAOS is a pioneer in biology and shifts the Skincare industry paradigm. NAOS owes its success to the dedication of more than 2,900 employees located around the world through its international presence based on 46 subsidiaries and long-term partnerships with local distributors. To sell its branded products BIODERMA® in over 90 countries, the Complainant operates under the name BIODERMA;

(b) The Complainant owns the Complainant's Trademarks; and

(c) The disputed domain name was registered on 15 November 2019 and points to a page using the Complainant’s Trademarks and logo to promote an event allegedly related to the Complainant’s products, to which internet users can register through an online form.

PARTIES CONTENTIONS

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) The disputed domain name contains Complainant’s Trademarks followed by the generic term “event”. The domain name concludes with the top-level domain name “.com”. The differences between disputed domain name and Complainant’s Trademarks are insufficient to distinguish one from the other;

(ii) The Respondent is not affiliated with the Complainant nor authorized by it in any way to use Complainant’s Trademarks. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither 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 by the Complainant. Moreover, the website operated under the disputed domain name displays Complainant’s Trademarks and logo and promote an event related to the Complainant’s Trademarks and products, to which internet users can register through an online form. The Complainant contends that this attempts to pass itself off as Complainant in furtherance of an attempt to collect personal information cannot be considered a bona fide offering of goods or services or legitimate non-commercial or fair use. Therefore, the Respondent has no legitimate interest in the disputed domain name;

(iii) Given the distinctiveness of the Complainant's Trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's Trademarks. The Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's Trademarks as to the source, sponsorship, affiliation, or endorsement of his website. Furthermore, the website operated under the disputed domain name displays Complainant’s Trademarks and logo and promote an event allegedly related to the Complainant’s Trademark and products to which the Internet users can register through an online form. The Complainant asserts that the Respondent attempts to pass off as the Complainant in order to obtain personal data from Internet users, who are misled into believing that the website is supported by or connected to the Complainant, i.e. the Complainant's Trademarks are misused for phising operation. This amounts to bad faith in registration and use of the disputed domain name.

THE RESPONDENT:

The Respondent did not provide any response to the complaint.

RIGHTS

The Panel concluded that the disputed domain name is confusingly similar to Complainant’s Trademarks within the meaning of paragraph 4(a)(i) of the Policy.

For details, please see "Principal Reasons for the Decision".

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

For details, please see "Principal Reasons for the Decision".

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

For details, please see "Principal Reasons for the Decision".

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the disputed domain name should be transferred or revoked:

(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.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in these proceedings.

RIGHTS

The disputed domain name is confusingly similar to Complainant’s Trademarks. It contains the Complainant's Trademarks "BIODERMA" and then a non-distinctive term "event" is added which is not sufficient to distinguish disputed domain name from Complainant's Trademark.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTEREST

The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, a respondent carries the burden of demonstrating rights or legitimate interests in a domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Panel finds that the Respondent operates a website under the disputed domain name which refers to Complainant's Trademarks and which requests internet users to register for some kind of event allegedly organized by the Complainant. Therefore, the Respondent attempts to pass off as the Complainant or at least create a false notion of association with the Complainant in order to obtain personal data from Internet users, who are misled into believing that the website is supported by or connected to the Complainant, in other words, the Respondent uses the website for phishing activities.

The Panel believes that phishing activities conducted using the disputed domain name confusingly similar to Complainant's Trademarks are clear evidence of bad faith of the Respondent as it has been held by number of previous UDRP decisions, please see for example Morgan Stanley v. Zhang Sheng Xu / Zhang Sheng Xu, FA 1600534 (Nat. Art. Forum Feb. 16, 2015) stating that Respondent’s use of the disputed domain name in furtherance of a phishing scheme constitutes bad faith registration and use pursuant to Policy 4(a)(iii)) or Juno Online Servs., Inc. v. Iza, FA 245960 (Nat. Arb. Forum May 3, 2004) concluding that using a domain name that is confusingly similar to the Complainant’s mark, redirects Internet users to a website that imitates the Complainant’s billing website, and is used to fraudulently acquire personal information from the Complainant’s clients is evidence of bad faith registration and use.

As a result, the Panel found that the disputed domain name has been registered and used by the Respondent in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BIODERMAEVENT.COM**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2020-02-14

Publish the Decision