

Decision for dispute CAC-UDRP-103923

Case number	CAC-UDRP-103923
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Time of filing	2021-07-08 09:21:49
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Domain names	biodermacream.com
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Case administrator

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

Organization	NAOS
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Complainant representative

Organization	Nameshield (Laurent Becker)
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Respondent

Organization	Biohealth Labs LLC
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns many trademark registrations for the trademark BIODERMA, including:

- United States trademark BIODERMA with registration number 4239940, registered on November 13, 2012;
- International Trademark BIODERMA with registration number 267207, registered on March 19, 1963;
- International Trademark BIODERMA with registration number 510524, registered on March 9, 1987;
- International Trademark BIODERMA with registration number 678846, registered on August 13, 1997; and
- European Union trademark BIODERMA with registration number 3136892, registered on April 15, 2003.

FACTUAL BACKGROUND

Facts asserted by the Complainant and not contested by the Respondent:

The Complainant is a beauty company that was founded in France 40 years ago. The Complainant owns 46 subsidiary companies and employs over 2,900 people around the world. The Complainant owns the BIODERMA trademarks as identified above (the “Trademark”) and it sells BIODERMA branded products in more than 90 countries worldwide.

The Complainant alleges that the disputed domain name is confusingly similar to the Trademark, which it incorporates entirely, while the addition of the generic term “cream” is not sufficient to escape the finding that the domain name is confusingly similar to the Trademark.

The Complainant further alleges that the Respondent does not have any rights or legitimate interest in the disputed domain name as the Respondent is not known under the disputed domain name, whereas no information about the Respondent is available. The Complainant also puts forward that it has no relationship with the Respondent and neither licensed nor authorized the Respondent to make use of the Trademark or to apply for registration of the disputed domain name. The disputed domain name resolves to a web shop which sells cream products under the Trademark. The Complainant asserts that the disputed domain name was registered in order to create a likelihood of confusion with the Complainant and its Trademark. According to the Complainant the Respondent uses the disputed domain name to offer products in direct competition with the Complainant by profiting of the notoriety of the Trademark in the disputed domain name, which is not a bona fide offering of goods or services.

The Complainant claims that that the term “BIODERMA” has no meaning in the dictionary so that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Trademark, and therefore in bad faith. Furthermore, the Complainant contends that the Respondent uses the disputed domain name to divert Internet users searching for the Complainant’s website to the Respondent’s website, and to create a likelihood of confusion with the Trademark for the Respondent’s commercial gain by offering competing products, which is evidence of bad faith.

PARTIES CONTENTIONS

No administratively compliant response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

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).

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).

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

1. The Panel finds that the disputed domain name is confusingly similar to the Trademark, which has been taken in its entirety in the disputed domain name. The addition of the term “cream” to the Trademark in the disputed domain name is descriptive of the goods for which the Complainant registered and uses the Trademark and actually enhances the confusion between the disputed domain name and the Trademark as an Internet user who is looking for the Complainant’s products may expect a combination of the Trademark and the term “cream”.

2. The Panel finds that the Complainant successfully submitted prima facie evidence that the disputed domain name resolves to a website which offers products under the Trademark which compete with the original products of the Complainant so that the Respondent neither made use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor made a legitimate non-commercial or fair use of the disputed domain name, while the Panel is also satisfied that the Respondent is not commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent.

3. In the absence of a Response, and based on the undisputed facts as disclosed by the Complainant, the Panel infers that the Respondent must have had the Trademark in mind when it registered the disputed domain name, which was therefore registered in bad faith. The Panel is further satisfied that the use of the disputed domain name to resolve to a website which offers products in direct competition with, and possibly also infringing the Complainant’s products under the Trademark, in order to take advantage of the reputation of the Trademark, constitutes use of the Trademark in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **BIODERMACREAM.COM**: Transferred

PANELLISTS

Name	Alfred Meijboom
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DATE OF PANEL DECISION 2021-08-03

Publish the Decision