

Decision for dispute CAC-UDRP-105875

Case number **CAC-UDRP-105875**

Time of filing **2023-10-13 09:38:18**

Domain names **biodermabella.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **NAOS**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Organization **Ali Estelik**

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 proved to be the owner of the following trademarks:

- i. The international trademark BIODERMA® n° 267207 registered since March 19th, 1963;
- ii. The international trademark BIODERMA® n° 510524 registered since March 9th, 1987;
- iii. The international trademark BIODERMA® n° 678846 registered since August 13th, 1997, designating among the other Turkey where the Respondent is allegedly based.

Furthermore, the Complainant is the owner of the domain name <bioderma.com> registered since September 25th, 1997 and used for its official website.

FACTUAL BACKGROUND

The Complainant is a beauty company that was founded in France 40 years ago. The Complainant owns 46 subsidiary companies and employs over 3,000 people around the world. The Complainant owns the skincare trademark BIODERMA and sells BIODERMA branded products in over 130 countries worldwide.

The disputed domain name <biodermabella.com> was registered on December 3rd, 2022 and redirects to a website offering for sale skin moisturizer products under the trademark BIODERMABELLA.

The Respondent is a Turkish based citizen named Ali Estelik.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant contends that the disputed domain name <biodermabella.com> is confusingly similar to the Complainant's registered trademark BIODERMA since it includes the Complainant's trademark in its entirety. The addition of the term "bella" does not sufficiently distinguish the disputed domain name from the Complainant's trademark. Furthermore, the addition of the country code Top-Level Domain ("ccTLD") ".ir" does not prevent the likelihood of confusion.

The Complainant submits that the Respondent does not own any rights or legitimate interests in the disputed domain name. The Complainant does not have any relationship or business connection with the Respondent. The Respondent is not authorized in any way to use the BIODERMA trademark nor he is known as the disputed domain name.

The Complainant further adds that the Respondent registered and is using the disputed domain name in bad faith. According to the Complainant, the Respondent should have been aware of the Complainant's trademark by virtue of its status as a well-known trademark and its widespread reputation throughout the world. The disputed domain name redirects to an online shop that offers competing products. The Complainant contends that the Respondent is using the BIODERMA trademark to intentionally mislead consumers into believing that the website is connected to the Complainant, for purposes of commercial gain.

RESPONDENT:

The Respondent did not file a response to the Complaint.

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 disputed domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The Panel agrees that the disputed domain name is confusingly similar to the BIODERMA trademarks owned by the Complainant. As a matter of fact, the BIODERMA sign is entirely contained in <biodermabella.com>; this fact is generally considered as sufficient to meet the threshold required by the First element of the Policy. In the Panel's view the addition of the word "bella" does not have a significant impact on the confusing similarity assessment. As a matter of fact, this word could be perceived as a descriptive term for the concerned

goods ("bella" means "beauty" and the domain name <biodermabella.com> is selling beauty products). In any case the Panel considers that the elements "BIODERMA" as the first and dominant element of the disputed domain name. Finally the addition of the ccTLD ".com" does not prevent a finding of confusing similarity with the Complainant's registered trademark since it has a technical function.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name.

According to the relevant case law, "*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*".

According to the Panel the Complainant has made out a *prima facie* case with respect to the Respondent's lack of rights and legitimate interests. In particular the Complainant proved to own trademarks and domain names composed by the trademark BIODERMA for many years before the registration of the disputed domain name. Moreover the BIODERMA trademark was used in the market for over 40 years. The evidence filed, which was not contested by the Respondent, proves that the disputed domain name is used to direct users to an online store active in the field of skincare products. This use without an explanation by the Respondent is not considered by the Panel as a bona fide offering of goods and services under the Policy. The Panel recalls that the burden shifts to the Respondent to bring forward evidence of rights or legitimate interests. The Respondent did not respond to the Complaint.

Accordingly, the Panel finds that the Complainant is deemed to have satisfied the requirements under paragraph 4(a)(ii) of the Policy.

3. The disputed domain name has been registered and is being used in bad faith.

According to the evidence submitted by the Complainant and not contested by the Respondent, the BIODERMA trademark is highly distinctive and enjoys a considerable reputation in the cosmetic field. Given this context, the Panel agrees that the Respondent, at the time of the registration of the disputed domain name, was probably aware about the Complainant's rights on the BIODERMA trademark.

The disputed domain name combines the BIODERMA trademark with the generic / descriptive term BELLA. This combination, without a reasonable explanation by the Respondent, could be interpreted as a way to capitalize on the Complainant's reputation in its trademark.

This is confirmed by the fact that the disputed domain name points to a website offering for sale skin moisturizer products. Thus <biodermabella.com> is used to sell products which are in competition with the Complainant's business. The Panel agrees that such use could divert Internet users searching for Complainant's website to Respondent's competing website, and to create a likelihood of confusion with Complainant's mark for Respondent's commercial gain by offering competing products.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under 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. **biodermabella.com**: Transferred

PANELLISTS

Name	Andrea Mascetti (Presiding Panelist)
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DATE OF PANEL DECISION 2023-11-16

Publish the Decision
