Decision for dispute CAC-UDRP-106329

Case number	CAC-UDRP-106329
Time of filing	2024-03-11 08:30:37
Domain names	biemorieux.com

Case administrator

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

Complainant

Organization	bioMérieux

Complainant representative

Organization	Plasseraud IP

Respondent

Name	Zao admin

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 the international trademark registration n° 933598 “BIOMERIEUX” (word), which was registered on 12 June 2007 and duly renewed since then. This trademark covers various goods in classes 1, 5, 9 and 10 and the following countries or regions: Antigua and Barbuda, Bahrain, Bonaire, Saint Eustatius and Saba, Curaçao, European Union, Georgia, Iceland, Japan, Republic of Korea, Norway, Singapore, Sint Maarten (Dutch part), Syria, Turkmenistan, Turkey, Uzbekistan, Zambia, Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Bhutan, Belarus, Switzerland, China, Cuba, Egypt, Croatia, Islamic Republic of Iran, Kenya, Kyrgyzstan, Democratic People’s Republic of Korea, Kazakhstan, Liechtenstein, Liberia, Lesotho, Morocco, Monaco, Republic of Moldova, Montenegro, The Former Yugoslav Republic of Macedonia, Mongolia, Mozambique, The Republic of Namibia, Serbia, Russian Federation, Sudan, Sierra Leone, San Marino, Swaziland, Tajikistan, Ukraine, Viet Nam, Algeria, Australia, Ghana, Gambia, Botswana, Colombia, Laos, Madagascar, New Zealand, Oman, Rwanda, and Zimbabwe.

The disputed domain name <biemorieux.com> was registered on 20 February 2024, i.e., after the date of registration of the Complainant’s trademark.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a multinational biotechnology company listed on the NYSE Euronext Paris Stock exchange. Its products are mainly used for diagnosing infectious diseases. They are also used for detecting microorganisms in agri-food, pharmaceutical and cosmetic products. The Complainant's business was founded in 1963, serves more than 160 countries by means of 43 international subsidiaries and through a large network of distributors. The Complainant's annual sales amount to approximately €3.6 billion.

The Complainant conducts business on the internet using its trademarks "BIOMERIEUX". It operates corresponding websites, in particular its main website under the domain name <biomerieux.com>. The domain name <biomerieux.com> is also used for all e-mail addresses used in Complainant's business.

The disputed domain name is not used for an active website but resolves to an error page. Instead, the disputed domain name was used to create email addresses from which emails were sent to a business partner of the Complainant, fraudulently purporting to be from an employee of the Complainant in an attempt to deceive the recipient into believing that the e-mails were legitimate. These fraudulent messages were designed to look like "reply to" messages, including a chain of original messages that were genuinely from a previous exchange between the Complainant and its business partner. The Complainant alleges that the Respondent accomplished this by fraudulently hacking into the e-mail system of one of the parties involved, where the Respondent noticed the original (genuine) e-mail exchange and then registered the disputed domain name to "continue" the previous e-mail discussion, but using the disputed domain name instead of the Complainant's original domain name <biomerieux.com>. The fraudulent e-mails sent from the disputed domain name were signed in the name of an employee who actually works for the Complainant, which demonstrates that the Respondent deliberately targeted the Complainant when it registered and used the disputed domain name to send these e-mails.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
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.

The Complainant had stated in the Complaint that, to the best of its knowledge, the language of the Registration Agreement was Japanese. Based on this assumption, the Complainant had requested that the language of the proceedings should nevertheless be English. However, the Registrar has confirmed that the language of the Registration Agreement is in fact English. It is therefore not necessary to rule on this procedural request of the Complainant.

PRINCIPAL REASONS FOR THE DECISION

The disputed domain name is confusingly similar to the Complainant's trademark "BIOMERIEUX". Replacing the third letter "o" with the letter "e" is an obvious case of "typosquatting" and does not change the overall impression of the designation as being almost

identical to the trademark.

The Panel further finds that the Complainant successfully submitted prima facie evidence that the Respondent has neither made any use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name. This prima facie evidence was not challenged by the Respondent.

As to the third element of the Policy, it is consensus among UDRP panelists that the use of a domain name for a per se illegitimate activity such as phishing is manifest evidence of bad faith (cf. sections 3.1.4 and 3.4 of the WIPO Jurisprudential Overview 3.0). As the disputed domain has been used to fraudulently send email messages intended to deceive their recipients, 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 ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **biemorieux.com**: Transferred

PANELLISTS

Name	**Dr. Thomas Schafft**

DATE OF PANEL DECISION 2024-04-17

Publish the Decision