Decision for dispute CAC-UDRP-106614

Case number	CAC-UDRP-106614
Time of filing	2024-06-24 09:24:22
Domain names	biomerieuxsharepoint.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	bioMérieux

Complainant representative

Organization	Plasseraud IP

Respondent

Organization	Fundacion Comercio Electronico

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 is the registered owner of many trademark registrations worldwide for “BIOMERIEUX”, e.g. International trademark registration no. 933598 BIOMERIEUX, registered on 12.6.2007 for goods in classes 1, 5, 9 and 10.

FACTUAL BACKGROUND

It results from the Complainant’s undisputed allegations that it is a French multinational biotechnology company, active in the field of diagnostic solutions 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. It has been 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 use numerous domain names which encompass the BIOMERIEUX mark to advertise the Complainant’s products around the world, i.e. <biomerieux.com>, <biomerieux.net>, <biomerieux.org>, among others.

The Complainant further contends its trademark BIOMERIEUX be distinctive and well-known.

The disputed domain name <biomerieuxsharepoint.com> was registered on 5.6.2024.

Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name resolves to a parking page resolved to a parking page displaying Pay-Per-Click (“PPC”) links in relation with the Complainant.

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.

PRINCIPAL REASONS FOR THE DECISION

1. Pursuant to paragraph 4(a)(i) of the Policy, the complainant must establish rights in a trademark or service mark, and that the disputed domain name is identical or confusingly similar to a trademark in which the complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various trademarks worldwide for the term “BIOMERIEUX”, e.g. International trademark registration no. 933598 BIOMERIEUX, registered on 12.06.2007 for goods in classes 1, 5, 9 and 10.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) at section 1.7).

Although the addition of other terms here, “sharepoint”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy, WIPO Overview 3.0, section 1.8.

Finally, the Top-Level Domain (“TLD”) “.com” of the disputed domain name may be disregarded under the first element confusing similarity test. WIPO Overview 3.0 at section 1.11.

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainants have rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name.

In the Panel's view, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the Complainant's trademark e.g. by registering the disputed domain name. Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Furthermore, it results from the undisputed evidence before the Panel that the disputed domain name has resolved to a parking website comprising PPC links that compete with or capitalize on the reputation and goodwill of the Complainant's trademark or otherwise mislead Internet users (i.e. a parking page displaying PPC links in relation with the Complainant). Prior UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent bona fide offering of goods or services, where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see WIPO Overview 3.0 at section 2.9, with further references). This Panel shares this view.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the Complainant must, lastly, establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in its paragraph 4(b) may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith. One of these circumstances is that the respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

In the present case, the Panel shares the view of other UDRP panels and finds that the Complainant's trademark BIOMERIEUX is well known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known the Complainant's trademark when registering the disputed domain name. This is underlined by the fact that the disputed domain name contains the Complainant's trademark entirely. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith, WIPO Overview 3.0 section 3.1.4. The Panel shares this view.

Furthermore, the Panel notes that it results from the Complainant's documented allegations that the disputed domain name resolved to a parking page displaying PPC links in relation with the Complainant. For the Panel, it is therefore evident that the Respondent positively knew the Complainant's mark. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent also knew that the disputed domain name included the Complainant's trademark when it registered the disputed domain name and that the Respondent used the disputed domain name in bad faith.

Finally, the Respondent has been involved in a number of trademark-abusive domain name registrations (i.e. over a hundred UPRP procedures). In the view of the Panel this behavior demonstrates a pattern of conduct by the Respondent of taking advantage of trademarks of third parties without any right to do so and is indicative of the Respondent's bad faith. Previous UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration, see WIPO Overview 3.0, section 3.1.2. The Panel considers that this is the case in the case at issue.

The Panel finds that the Complainant has therefore satisfied 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. **biomerieuxsharepoint.com**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2024-07-24

Publish the Decision