Decision for dispute CAC-UDRP-106854

Case number	CAC-UDRP-106854
Time of filing	2024-09-11 12:24:21
Domain names	lojabioderma.store

Case administrator

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

Complainant

Organization	NAOS

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	48885794000144

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 a number of trademarks, inter alia the following trademark registrations:

International trademark “BIODERMA“, No. 267207 registered 19/03/1963;

International trademark “BIODERMA“, No. 510524 registered on 09/03/1987;

International trademark “BIODERMA“, No. 678846 registered on 13/08/1997.

Furthermore, the Complainant owns multiple domain names that include the wording “BIODERMA”.

FACTUAL BACKGROUND

The Complainant is a skincare company founded in France that has established itself as one of the top ten operators of independent

beauty companies worldwide thanks to its three brands Bioderma, Institut Esthederm and Etat Pur. The Complainant employs around 3,100 employees located in 130 countries. The Complainant runs 48 subsidiaries and recorded a turnover of 537 million euros in 2020.

The Complainant uses the trademark ”BIODERMA” for its products. The operated, inter alia, the domain name "bioderma.com" since 1997.

The disputed domain name was registered in the name of the Respondent on 04/09/2024 and redirects to a website displaying the Complainant’s trademark and offering unauthorized or counterfeited BIODERMA goods at discounted prices.

PARTIES CONTENTIONS

The Complainant states that the disputed domain name is confusingly similar to its trademark “BIODERMA“ and its domain names associated because it includes the trademark entirely. The addition of the prefix "loja", meaning “store” in Portuguese, does not preclude similarity.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name since the Respondent is using the domain name for a website displaying the Complainant’s trademark and offering unauthorized or counterfeited BIODERMA goods at discounted prices.

Furthermore, the disputed domain name has been registered and is being used in bad faith. The domain name contains the well-known trademark “BIODERMA” and points to an online store that displays the Complainant’s trademark and offers the Complainant’s branded products, which indicates that the Respondent is aware of the Complainant’s company and their trademarks. The Complainant states that the Respondent uses the domain name to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant’s trademark.

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

As the Respondent did not file an administratively compliant Response, pursuant to paragraph 14 (b) of the Rules, the Panel may

draw such inferences therefrom as it considers appropriate. Thus, the Panel accepts the contentions of the Complainant as admitted by the Respondent. Taking the statements and documents submitted by the Complainant under careful consideration, the Panel concludes, that the Complainant has established all the elements entitling it to claim the transfer of the disputed domain name.

1. The disputed domain name is confusingly similar to the trademarks of the Complainant.

The Complainant has, to the satisfaction of the Panel, shown that it has valid rights for the multiple trademarks “BIODERMA”.

The disputed domain name includes the Complainant's trade mark “BIODERMA”‘ in its entirety.

The addition of the element “loja” in front of the words “bioderma.store” (meaning “store” in Portuguese) is not sufficient to invalidate the finding that the disputed domain name is confusingly similar to the Complainant's trademark and does not change the overall impression of the disputed domain name as being associated with the Complainant's trademark. Internet users may be wrongly led to believe that the disputed domain name is directly related to the Complainant.

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

The Complainant has established a prima facie proof that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to use its trademark in a domain name.

Further, the disputed domain name does not correspond to the name of the Respondent nor is he commonly known as “BIODERMA” prior to or after the registration of the disputed domain name. It is therefore not apparent that the website is to be used for bona fide reasons.

Moreover, the disputed domain name resolves to a page displaying the Complainant’s trademark and offering unauthorized or counterfeited goods at discounted prices. Therefore, the domain name website is misleading and creates a false impression of affiliation between the Complainant and the Respondent, since the online shop hosted is not legitimate and offers to sale prima facie unauthorized or counterfeited - thus illegitimate - products branded with the trademarks of the Complainant.

Such use of the disputed domain name also cannot be considered legitimate non-commercial or fair use without intent for commercial gain, since the Respondent is obviously attempting to gain from the sales of the illegitimate products. It seems to the Panel that the Respondent's intent is to benefit from the Complainant’s trademark reputation to illegitimately trade on the Complainant’s popularity for commercial gain.

Summarised, there is no evidence for a use of the disputed domain name for any bona fide offer of goods or services or a legitimate non-commercial or fair use.

3. The disputed domain name has been registered and is being used in bad faith within the meaning of the Policy.

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

The Complainant’s trademark “BIODERMA” is highly distinctive and well-established and has already been well known at the time the Respondent registered the disputed domain name. Given the distinctiveness of the Complainant's trademarks and reputation, it can be concluded that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.

Furthermore, all the results of a web search of the terms “BIODERMA” refer to the Complainant.

The structure of the disputed domain name and the design of the linked website show that the Respondent registered the disputed domain name with the Complainant and its trademarks in mind. This is demonstrated by the use of the trademark “BIODERMA” in its entity, only framed by the word “shop” in Portuguese and English. Moreover, the website is designed in a way that creates an association and thus a likelihood of confusion with the Complainant's trademark. For example, only the sign “BIODERMA” appears at the head of the website next to the search bar, in what appears to be the exact font and size of the sign on the Complainant's website. Additionally, the Respondent’s website partially shows highly similar screen-filling advertising images as the Complainant’s website and the website refers to the e-mail address “suporte@Bioderm.com” for customer support. Thus, the Respondent uses a domain name very similar to the main domain name of the Complainant. This shows the Respondent's clear intention to create an association and thus a likelihood of confusion with the Complainant's trademark in the mind of internet users.

According to 4 (b) (iv) of the Policy, such a likelihood of confusion is a circumstance in which bad faith registration and use can be assumed.

The Complainant states that the disputed domain name is therefore used to host a website to impersonate the Complainant and attempt to mislead consumers into thinking that the goods offered for sale on the website originate from the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lojabioderma.store**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2024-10-08

Publish the Decision