

Decision for dispute CAC-UDRP-106887

Case number CAC-UDRP-106887

Time of filing 2024-09-23 09:56:10

Domain names bioderma.pro

Case administrator

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

Complainant

Organization NAOS

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Adriano Vieira de Andrade

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 large portfolio of trademarks including the wording "BIODERMA" in several countries, which at least includes:

- The international trademark BIODERMA n° 267207 registered since March 19, 1963;
- The international trademark BIODERMA n° 510524 registered since March 9, 1987;
- The international trademark BIODERMA n° 678846 registered since August 13, 1997.

Furthermore, the Complainant owns multiple domain names consisting in the wording "BIODERMA", such as <bioderma.com> registered since September 25, 1997 and used for its official website.

FACTUAL BACKGROUND

The Complainant NAOS is founded in France more than 40 years ago by Jean-Noël Thorel, a pharmacist-biologist. NAOS is a major player in skincare thanks to its three brands: Bioderma, Institut Esthederm and Etat Pur. Ranked among the top 10 independent beauty companies, NAOS is a pioneer in biology and shifts the Skincare industry paradigm.

The Complainant owns multiple domain names consisting in the wording "BIODERMA", such as <bioderma.com> registered since September 25, 1997 and used for its official website.

The disputed domain name <bioderma.pro> was first registered on September 18, 2024, and redirects to a website offering for sale cosmetic products.

PARTIES CONTENTIONS

The Complainant alleges that disputed domain names infringed its rights in accordance with relevant UDRP policies and rules.

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

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

The Complainant NAOS owns a large portfolio of trademarks including the wording "BIODERMA" in several countries, such as:

- The international trademark BIODERMA n° 267207 registered since March 19, 1963;
- The international trademark BIODERMA n° 510524 registered since March 9, 1987;
- The international trademark BIODERMA n° 678846 registered since August 13, 1997.

Furthermore, the Complainant owns multiple domain names consisting in the wording "BIODERMA", such as <bioderma.com> registered since September 25, 1997 and used for its official website.

The disputed domain name <bioderma.pro> incorporates the Complainant's BIODERMA trademark in its entirety. gTLDs are commonly viewed as a standard registration requirement, and as such they are disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11). ".pro" could refer to any professional services, the use of the ".pro" gTLD implies the close link between the brand and services provided by certified professionals, which is more likely to lead to user confusion given the customer profiles of the Complainant's BIODERMA brand.

The Panel therefore concludes that the disputed domain names is identical with a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

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

Although the Respondent did not file an administratively compliant (or any) response, the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant in the present case has not licensed or authorized the Respondent to register or use its trademark BIODERMA or the disputed domain name. There is also no evidence that the Respondent "Adriano Vieira de Andrade" known by the disputed domain name or owns any corresponding registered trademark related to "BIODERMA". It is presumably true that there is an absence of any legitimate interest within the Respondent in registering a domain name containing the term "BIODERMA".

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

The use and registration of the disputed domain name by the Respondent has been done in bad faith.

First of all, the registration of the disputed domain name by the Respondent was done in bad faith. UDRP panels have consistently held that the mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. The disputed domain name was very recently registered (on September 18, 2024). The brand and its registered mark enjoy a high level of distinctiveness and has develop a wide reputation. With the reputation of the "BIODERMA" trademark, the presumption arises that the disputed domain name was registered with the intention to attract Internet users by creating a likelihood of confusion with the well-known "BIODERMA" trademark.

Secondly, the use of the disputed domain name was in bad faith. The Complainant bases its argument mainly on paragraph 4(b) (iv) of the Policy, "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location." Such facts, if found by the panel, shall be evidence of the registration and use of a domain name in bad faith.

In this case, the disputed domain name redirects to an online store which offers for sale unauthorized products of the Complainant. Like the Complainant has rightly argued, using a domain name in order to offer counterfeit products is often been held to disrupt the business of the owner of the relevant mark is bad faith (See Please see Forum Case No. FA 768859, Instron Corporation v. Andrew Kaner c/o Electromatic a/k/a Electromatic Equip't). The disputed domain name hosts a website at which references the Complainant's BIODERMA mark as part of advertising and promoting the services, which could have constituted infringement of the Complainant's trademark. In this case, it does not seem that Respondent has legitimate uses of the disputed domain name in addition to creating a likelihood of confusion with the Complainant's trademark to generate more traffic (and thus revenues) for itself. This use is unfair and intentional. Therefore, the facts satisfy the requirements of paragraph 4(b)(iii) and 4b(iv) of the Policy.

Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the Complainant has provided that disputed domain name was 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. **bioderma.pro**: Transferred

PANELLISTS

Name	Carrie Shang
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DATE OF PANEL DECISION 2024-10-27

Publish the Decision
