Decision for dispute CAC-UDRP-107048

Case number	CAC-UDRP-107048
Time of filing	2024-11-11 08:58:26
Domain names	biomereux.org

Case administrator

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

Complainant

Organization	bioMérieux

Complainant representative

Organization	Plasseraud IP

Respondent

Organization	L and L Diagnostics Ltd.

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 owner of many registered trademarks for BIOMERIEUX all over the world, including:

- United States trademark BIOMERIEUX, with registration number 3906321, registered on January 18, 2011 for goods in classes 1, 5, 9 and 10;
- International Trademark BIOMERIEUX, with registration number 1392389, registered on October 25, 2017 for services in classes 35, 37, 41, 42 and 44, designating, inter alia, the United States of America (the “United States”); and
- Unites States Trademark BIOMERIEUX with registration number 5830553, registered on August 13, 2019, for services in classes 35, 37, 41, 42 and 44.

FACTUAL BACKGROUND

Facts asserted by the Complainant and not contested by the Respondent:

The Complainant is a French multinational biotechnology company listed on the NYSE Euronext Paris Stock exchange, which products are mainly used for diagnosing infectious diseases. The Complainant has been founded in 1963, has 43 subsidiaries around the world and a large network of distributors which serves more than 160 countries, and €3.6 billion in sales.

The disputed domain name was registered on October 30, 2024 and resolves ta parking page which displays sponsored links promoting activities competing with those of the Complainant. The disputed domain name was also used to send one or more e-mails which impersonate the Complainant in an attempt to the recipient to make a payment on a bank account presumably controlled by the Respondent.

PARTIES CONTENTIONS

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. The Panel finds that the disputed domain name is confusingly similar to the Complainant's BIOMERIEUX trademarks which were registered prior to the registration of the disputed domain name. The disputed domain name wholly incorporates the Complainant's BIOMERIEUX trademark except the second “i”, which does not eliminate the similarity between the Complainant's trademarks and the disputed domain name. According to par. 1.11 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") the “applicable Top Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”.

2. The Panel finds that the Complainant successfully presented evidence that the Respondent used the disputed domain name to send at least one e-mail to a customer of the Complainant in order to induce them to transfer money to a bank account presumably belonging to the Complainant. The Complainant's evidence shows that the e-mail in question not only copied the name and job title of an employee of the Complainant, but also the characteristic formatting of that employee's e-mails, and included a copy of an invoice of the Complainant bearing the BIOMERIEUX trademark and the Complainant’s details, in an apparent attempt to lead the recipient to believe that the e-mail was authentic and from the Complainant. Incidentally, the Panel finds it remarkable that this e-mail and accompanying invoice is addressed to Jasmine Skiles of L&L Diagnostics, whose details match those of the Respondent. The Complainant states in this regard that the Respondent provided false contact details to conceal his true identity. According to WIPO Overview 3.0, section 2.13.1, “Panels have categorically held that the use of a domain name for illegal activity (..) can never confer rights or legitimate interests on a respondent.” In the absence of a convincing explanation to the contrary, the Panel considers it most likely that the disputed domain name is being used for fraudulent purposes that could never result in the Respondent's right or legitimate interest in respect to the disputed domain name.

3. In the absence of a Response, the Panel infers from the fact that the disputed domain name was used to send out one or more fraudulent e-mails which mimic the look and feel of the Complainant, that the Respondent must have had the Complainant's

BIOMERIEUX trademark in mind when it registered the disputed domain name, which was therefore registered in bad faith. Further, the Panel is satisfied that the Respondent's use of the disputed domain name is in bad faith as the disputed domain name was most likely used for fraudulent purposes, as found sub 2 above.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **biomereux.org**: Transferred

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2024-12-16

Publish the Decision