Decision for dispute CAC-UDRP-107206

Case number	CAC-UDRP-107206
Time of filing	2024-12-30 10:47:49
Domain names	biomnerieux.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	bioMérieux

Complainant representative

Organization	Plasseraud IP

Respondent

Organization	Naso LLC

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 bioMérieux owns different trademarks consisting of the word "BIOMERIEUX". In particular the Complainant has fully proved to be the owner of the following signs:

International trademark "BIOMERIEUX" (word) registration No.933598, registered on June 12, 2007 and duly renewed;

International trademark "BIOMERIEUX" (word) registration No.1392389, registered on October 25, 2017;

International trademark "BIOMERIEUX" (device) registration No. 1478156, registered on June 4, 2018;

European trademark "BIOMERIEUX" (device) registration No. 17912668, registered on October 20, 2018;

French trademark "BIOMERIEUX" (device) registration No. 4416795, registered on April 27, 2018.

FACTUAL BACKGROUND

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

The Complainant is bioMérieux ("Complainant"), a French multinational biotechnology company listed on the NYSE Euronext Paris Stock exchange. Its products are mainly used for diagnosing infectious diseases. According to the Complainant, bioMérieux 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 informs that its leadership in the field of in vitro diagnostics lasts for over 60 years, with €3.6 billion in sales.

BioMérieux is the registered holder of numerous word and figurative "BIOMERIEUX" trademarks in many jurisdictions (for more information see section Identification of Rights). In addition, the Complainant holds many domain names including <biomerieux.com>.

The disputed domain name <biomnerieux.com> was registered on December 18, 2024.

The Complainant states that the disputed domain name <biomnerieux.com> is confusingly similar to its trademark "BIOMERIEUX". In particular, in the Complainant's view, the domain name comprises in full the "BIOMERIEUX" trademark and the addition of the letter "n" in the middle of the sign is not sufficient to escape the finding that the disputed domain name is extremely confusingly similar to the trademark.

The Complainant contends that the Respondent is not commonly known by the disputed domain name and that the Respondent is not affiliated with or authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and is not related to the Complainant’s business in any way. The Complainant does not carry out any activity for, nor has any business dealings with, the Respondent.

The Complainant also notes that the domain name <biomnerieux.com> resolves to a parking page exclusively containing sponsored links and that, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with the full knowledge of the Complainant's trademarks.

Finally, the Complainant informs that the disputed domain name has been used to create email addresses from one of which an email deceitfully impersonating the Complainant was sent in order to fraudulently try to conduct its recipient to believe that it was legitimate coming from the Complainant. In this respect the Complainant notes that said email sent by the Respondent was sent in a chain of messages which genuinely originate from exchanges between the Complainant and its supplier, that said fraudulent message is signed under the name of an employee genuinely working for the Complainant and, finally, that the fraudulent message was sent to the Complainant's supplier exactly on the day the disputed domain name has been registered. This, according to the Complainant, is also indicative of bad faith registration and use.

PARTIES CONTENTIONS

The Complainant contentions are summarised above.

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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

1) The Complainant has provided evidence to be the owner of the trademark "BIOMERIEUX". The Panel view is that the Respondent has appropriated the trademark "BIOMERIEUX" by adding the letter "n" to create a confusing similarity between the Complainant's trademark and the disputed domain name <biomnerieux.com> and to lead consumers to believe that it is affiliated with the Complainant. The Panel finds that the obvious misspelling of the Complainant's trademark "BIOMERIEUX" (through the addition of the letter "n") is a classic example of typosquatting practice, intended to create confusing similarity between the Complainant's trademark and the disputed domain name (see, among others, NAMESHIELD v. Geral Gera SEGLINK, CAC Case No. 107157, Comerica Bank v. Name Redacted, WIPO Case No. D2017-1686 and Amadeus IT Group, S.A. v. ERIC FILHASTRE, WIPO Case No. D2024-4568). Additionally, the generic Top-Level Domain ".com" is obviously a mere standard registration requirement and should be disregarded when assessing whether a disputed domain name is confusingly similar to the trademark in which the Complainant has rights. Accordingly, the Complainant has, to the satisfaction of the Panel, shown that the domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Complainant therefore succeeds on the first element of the Policy.

2) The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain name as it is not commonly known under the disputed domain name and was never authorized to use the Complainant´s "BIOMERIEUX" trademark. The Respondent, in the absence of any Response, has not shown any facts or elements to justify prior rights or legitimate interests in the disputed domain name. The Complainant therefore succeeds on the second element of the Policy.

3) The Panel is satisfied that the Respondent must have been aware of the Complainant's trademark "BIOMERIEUX" when he registered the disputed domain name on December 18, 2024. The Complainant has submitted evidence to support that the trademark "BIOMERIEUX" is widely known and was registered and used many years before the Respondent registered the disputed domain name. Furthermore, in the light of the evidence submitted by the Complainant, the Panel agrees that the trademark "BIOMERIEUX" is undoubtedly a well-known mark. Actually, the Panel's view is that the Respondent, when registering the disputed domain name, has targeted the Complainant's well-known trademark "BIOMERIEUX" with the intention to confuse Internet users and capitalize on the goodwill of the Complainant´s name and trademark for his own monetary benefit. The Complainant has demonstrated that the Respondent has used the disputed domain name as an email address to send a fraudulent email to confuse Internet users to make them think that the person sending such email is connected to bioMérieux. This behavior involves an identity theft and a phishing activity aimed to the purpose of obtaining confidential data. The above mentioned behaviour is particularly serious in the case at hand considering that: (i) the fraudulent message sent by the Respondent was sent in a chain of messages which genuinely originate from exchanges between the Complainant and its supplier (ii) the fraudulent message is signed under the name of an employee genuinely working for the Complainant and (iii) the fraudulent message was sent to the Complainant's supplier exactly on the day the disputed domain name has been registered. The Panel's view is that the above elements outlined by the Complainant clearly demonstrate that the fraudulent scheme of the Respondent, with the purpose of misleadingly impersonate the Complainant, was meticulously prepared before registering the domain name and that the use of the disputed domain name is clearly in bad faith (see Swiss Life AG, Swiss Life Intellectual Property Management AG v. Alex Gorsky, swiss life usa, WIPO Case No. D2021-3258). Furthermore, the disputed domain name currently resolves to a parking page with commercial links. Countless UDRP decisions confirmed that the passive holding of a domain name with the knowledge that the domain name infringes another party's trademark rights is evidence of bad faith registration and use (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). In conclusion, the Panel finds that the Respondent has registered and uses the disputed domain name intentionally to attempt to attract for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's well known and widely used "BIOMERIEUX" trademark as to the source, sponsorship, affiliation, or endorsement. This amounts to bad faith under paragraph 4(b)(iv) of the Policy. In consideration of the above, the Panel deems that the domain name in dispute was registered and used in bad faith and accordingly that the Complainant has satisfied also the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **biomnerieux.com**: Transferred

PANELLISTS

Name	**Guido Maffei**

DATE OF PANEL DECISION 2025-02-03

Publish the Decision