Decision for dispute CAC-UDRP-107619

Case number	CAC-UDRP-107619
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Domain names	alainmerieux.com

Case administrator

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

Complainant

Organization	INSTITUT MERIEUX

Complainant representative

Organization	Plasseraud IP

Respondent

Name	Abderrahmane Zeryouh

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 has submitted evidence, which the Panel accepts, showing that it is the registered owner of the trademarks bearing “MERIEUX”, inter alia, the following:

- French trademark “MERIEUX” n° 4224302, registered on November 9, 2015;
- International trademark “MERIEUX” n° 1303400, registered on March 7, 2016;
- French device trademark “INSTITUT MERIEUX” n° 3706770, registered on January 22, 2010;
- European Union device trademark “INSTITUT MERIEUX” n° 008876872, registered on August 2, 2010;
- International device trademark “INSTITUT MERIEUX” n° 1047514, registered on July 13, 2010.

FACTUAL BACKGROUND

The Complainant, INSTITUT MERIEUX, is a French company operating worldwide in biology and medicine since its establishment in 1897. The Complainant’s chairman’s name is Alain Mérieux and he is both a businessman and a philanthropist, he is also the chairman of the Fondation Mérieux. Besides their operation in different countries, Fondation Mérieux and Institut Pasteur du Maroc in Morocco have joined forces to build a new Centre of diagnostics and expertise for tuberculosis and mycobacteria in Casablanca. The companies in connection to the Complainant, where Alain Mérieux is authorized, also operates in immunology and nutritional sciences.

The Complainant holds many trademark registrations including “MERIEUX” and “INSTITUT MERIEUX” phrases going back to 2010.

On September 12, 2024; the Respondent registered the disputed domain name <alainmerieux.com>. The disputed domain name is currently inactive.

PARTIES CONTENTIONS

COMPLAINANT:

1. THE DISPUTED DOMAIN NAME IS IDENTICAL

The Complainant states that the disputed domain name is confusingly similar to the Complainant’s distinctive and well-known trademark “MERIEUX”, as it bears the Complainant’s trademark as a whole except for the addition of the name “ALAIN”, which forms the name of the chairman of the Complainant company.

The Complainant claims that where a side-by-side comparison of the disputed domain name and the textual component of the relevant trademark shows the mark is recognizable within the disputed domain name, then the disputed domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing. It is further claimed that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent any finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements.

Besides, similar cases involving a disputed domain name consisting the reproduction of a trademark with the addition of a first name were referred to by the Complainant to support the claim that the UDRP panels steadily issue a confusing similarity decision.

Lastly, the Complainant argued that the generic top-level domain (gTLD) may be ignored for the purpose of assessing the confusing similarity, because of its merely technical function.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant states that it has never granted the Respondent with any rights to use the “MERIEUX” trademarks in any form, including in the disputed domain names. Also, the Complainant has not found that the Respondent is known by the disputed domain names or has any trademark rights that may be basis for the disputed domain names.

The Complainant asserted that the Respondent could have easily performed an online search before registering the disputed domain names and would have quickly learnt that the trademark is owned by the Complainant and that the Complainant has been using these distinctive and well-known trademarks for its business activities.

The Complainant further argues that there is absolutely no evidence of any fair or non-commercial or bona fide use of the disputed domain name in connection with goods and services because the disputed domain name resolves to a parking page displaying sponsored links in the medical field and therefore promoting competing activities when preparing the Complaint.

Moreover, the Complainant claims that any legitimate interest of the Respondent in the disputed domain name is all the more inconceivable that the Complainant’s rights are globally well-known and exclusively related with the Complainant. In this respect, it is stated that the nature of the disputed domain name (in as far as it reproduces the Complainant’s mark in an identical way with the element “alain” which is precisely the name of the Complainant’s Chairman and a well-known businessman) carries a high risk of implied affiliation with the Complainant, and therefore cannot constitute fair use, as it effectively impersonates or suggests sponsorship or endorsement by the Complainant, as per WIPO Overview 3.0, section 2.5.1.

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant states that its trademark “MERIEUX” predates the disputed domain name and it is intrinsically highly distinctive and exclusively related with the Complainant. The Complainant asserts that its trademarks’ well-known character has already been recognized by previous panel decisions, by referring to the examples below:

- WIPO Case No. D2020-0689, Institut Merieux v. Qi Hu, Huqi (“The Panel is satisfied that the Respondent must have known the Complainant’s well-known MERIEUX trademark when it registered the disputed domain name.”);
- WIPO Case No. D2016-1215, Institut Merieux v. Shilirong, juming.com (“Respondent (who did not reply to Complainant’s contentions) has not presented any plausible explanation for its use of Complainant’s widely-known mark.”);
- WIPO Case No. D2011-0974, Institut Merieux v. Summit Services LLC (“When the disputed domain name was registered the Complainant’s trademark INSTITUT MERIEUX was already well known in the field of medical diagnostics worldwide.”).

The Complainant states that the registration of the disputed domain name could not be a coincidence, and the Respondent was actually fully aware of the existence of the Complainant and of its prior rights on the “MERIEUX” trademark when he registered the disputed domain name.

Furthermore, the element “alain” which is added to the “MERIEUX” trademark within the disputed domain name is argued to be

clearly referring to the well-known businessman and Complainant's chairman Alain Merieux and the presence of this element in combination with the Complainant's well-known and distinctive trademark undisputably evidence by itself that the Respondent has proceeded with the registration of the disputed domain name with the clear will to target the Complainant, in order to make Internet users, clients or partners wrongly believe that the disputed domain name is related with the Complainant.

Furthermore, the Complainant claims that the Respondent has hidden its identity and contact information through a privacy service, which is also supportive of a finding of bad faith registration.

Moreover, it was claimed that the fact the disputed domain name redirects toward parking page displaying PPC links in relation with the Complainant's field of activities constitutes further evidence that the Respondent was willingly targeting the Complainant's trademark. The Complainant argues that the use of the disputed domain name creates a likelihood of confusion with the Complainant's prior right and diverts toward the Respondent's website Internet users interested in the Complainant, and it unduly enables the Respondent to capitalize on the Complainant's rights because each time an Internet user clicks on a PPC link the Respondent very likely earn money.

Similar cases involving domain names confusingly similar to the "MERIEUX" trademark and used to redirect toward PPC parking pages were given as examples, where the previous panels have decided in favour of the Complainant:

- WIPO Case No. D2010-0866, Institut Merieux v. Ho Nim ("Whilst noting the Respondent's history of cybersquatting (see e.g. Berlitz Investment Corporation v. Ho Nim, WIPO Case No. D2010-0129 and Arla Foods amba v. Ho Nim, WIPO Case No. D2010-0157), it is sufficient for this Panel to dispose of this case to find that, by using the Domain Name to provide links to sites offering products competitive with those of the Complainant, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of his website. Under the Policy, paragraph 4(b)(iv), such use is evidence of both bad faith registration and bad faith use. In the absence of any evidence indicating registration for a permissible purpose, the Panel finds that the Respondent has registered and is using the Domain Name in bad faith.").

- WIPO Case No. D2011-0974, Institut Merieux v. Summit Services LLC ("When the disputed domain name was registered the Complainant's trademark INSTITUT MERIEUX was already well known in the field of medical diagnostics worldwide. Therefore, it is not feasible that the Respondent could have been unaware of the Complainant's reputation and business. This conclusion is emphasized by the fact that the disputed domain name also reproduces the name of the Complainant's chairman and president and by the contents published there, related to medical diagnostics and vaccines. Actually, the disputed domain name is being used as a pay-perclick landing page, displaying sponsored links for third party websites that offer competing products. Therefore, in doing so, the Respondent: (i) create a likelihood of confusion with the Complainant's trademark; (ii) obtain click-through revenue from this practice; and (iii) deprive the Complainant from selling its products to prospective clients who are clearly looking for the Complainant and, at the same time, promote products offered by competitors. In situations like this, former UDRP decisions have considered this type of use of a domain name enough to demonstrate bad faith.").

Additionally, the Complainant asserts that MX records have been set up on the disputed domain name. As a consequence, the Respondent can send e-mails through the e-mail address "@alainmerieux.com" and therefore may use the disputed domain name to send fraudulent e-mails such as messages containing spam, or phishing attempts. It was claimed that many decisions issued by UDRP panels have ruled that the use of MX records, showing that the Respondent may use the domain name actively in the future for e-mail correspondence, together with the reputation of the Complainant's trademarks, is considered to be indicative of bad faith use of the domain name. The Complainant further states that the Respondent has not only recorded 1 but 5 MX and has also configurated a SPF (Sender Policy Framework) record with the disputed domain name. It was explained that SPF Record allows the receiving e-mail server to check, during e-mail delivery, that an e-mail (incoming from a specific domain name) is submitted by an IP address and/or e-mail server authorized by that domain name's administrators. Just proceeding with such an advanced technical configuration is claimed to reveal a willing and genuine intent to use the disputed domain name to exchange e-mails and to maximize the deliverability of the e-mails send from the disputed domain.

It is pointed out that the Complainant is active in the field of health which is particularly sensitive since the personal data collected are extremely confidential, so, a fraudulent use of the disputed domain name would be extremely damageable not only for the Complainant, but also for the victims, if they are patients.

The Complainant argues that once the identity of the Respondent was revealed by the Registrar and based on research carried out into the name "Abderrahmane Zeryouh" and the postal address ("Casablanca – Casablanca - Morocco - Casablanca, 20000 - Morocco)", as well as the e-mail address (abdelzer12@gmail.com) and the phone number (+90 5400083000), the registrant information given appear to be false or fancy pieces of information put together trying to give the impression of consistency, which adds to the alleged bad faith, since the communicated phone number (+90 5400083000) seems to be inaccurate as the phone area of Marocco is 212 and not 90 which is the phone area of Turkey. The postal address provided also claimed to not seem to correspond to a real address.

Accordingly, the Complainant alleges that the disputed domain name was registered and is being used in bad faith.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

1. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

1. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of “MERIEUX” and “INSTITUT MERIEUX” trademarks.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s “MERIEUX” trademark, as it is clearly recognizable in the disputed domain name and the addition of the name “ALAIN” is not sufficient to vanish the identity. On the contrary, such addition may cause a higher similarity and association with the Complainant, since it is identical to the name of the Complainant’s Chairman, Alain Merieux.

Moreover, the addition of the gTLD “.COM” is not enough to abolish the identity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

2. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the complainant has the burden of establishing that the respondent has no rights or legitimate interests in respect of the domain name.

It is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the complainant will have failed to discharge its burden of proof and the complaint will fail. The burden is on the complainant to demonstrate a prima facie case that the respondent does not have rights or legitimate interests in the disputed domain name. Once the complainant has made out a prima facie case, then the respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

It is understood from the explanations of the Complainant that the Respondent and the Complainant has no relationship or agreement on the use of the disputed domain name. In the absence of a response, the Panel considers that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name.

Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain dame, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

3. BAD FAITH

The Panel concludes that the Complainant's "MERIEUX" and "INSTITUT MERIEUX" trademarks are of distinctive character and has reputation, also acknowledging the referred previous panel decisions.

Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the "MERIEUX" and "INSTITUT MERIEUX" trademarks, the Respondent, knew or at least should have known the Complainant and its trademarks at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Lastly, besides "MERIEUX" trademark of the Complainant being recognizable in the disputed domain name, the fact that the disputed domain name comprising of the name of the Complainant's Chairman Alain Merieux, who is a known businessman and philanthropist cannot be considered in good faith, especially in light of no authorization, no relation and no response to either show a legitimate reason or rebut the bad faith claims.

Moreover, the disputed domain name is currently invalid. Even if there is no present use of the disputed domain name, the fact that it was parked with PPC links shown by the Complainant before and there is MX record connected to the disputed domain name suggests that the Respondent will not be able to make any use of the disputed domain name in good faith, since it is neither affiliated to nor authorized by the Complainant. Besides, regarding inactive domain names, section 3.3 of the WIPO Overview 3.0 provides the following: "From the inception of the UDRP, panellists have found that the non-use of a domain name (including a blank or 'coming soon' page) would not prevent a finding of bad faith under the doctrine of passive holding. While panellists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

All the circumstances of the case must be examined to determine whether the Respondent is acting in bad faith. The cumulative circumstances for an indication of bad faith include the Complainant having a well-known trademark, no response having been filed ever, concealed identity, and the disputed domain names being inactive, which all happened in this case.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under 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. **alainmerieux.com**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2025-07-07

Publish the Decision