

ADMINISTRATIVE PANEL DECISION

NAOS v. Faramarz Hajikhani

Case No. D2023-4624

1. The Parties

The Complainant is NAOS, France, represented by Nameshield, France.

The Respondent is Faramarz Hajikhani, Iran (Islamic Republic of).

2. The Domain Name and Registrar

The disputed domain name <bioderma-cosmetics.com> (the “Domain Name”) is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. Also on November 9, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint.

The Center sent an email communication to the Complainant on November 9, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on November 9, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on November 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 3, 2023. Aside from informal communications sent on November 29, 2023, the Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on December 6, 2023.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on December 7, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant, NAOS operates in the skincare industry with three well-known brands: Bioderma, Institut Esthederm and Etat Pur. It has some 3000 employees located around the world based on 48 affiliates and long-term partnerships with local distributors.

The Complainant owns a large portfolio of trademarks including the wording BIODERMA in several countries, such as International trademark number 267207 (registered on March 19, 1963) and International trademark number 510524 (registered on March 9, 1987).

The Complainant is the registrant of multiple domain names including the brand BIODERMA, such as <bioderma.com> (registered on September 25, 1997).

The Domain Name was registered on October 29, 2023. The Domain Name has resolved to a webpage under construction with a BIODERMA logo on it.

5. Parties' Contentions

A. Complainant

The Complainant provides evidence of trademark registrations and argues that the Domain Name is confusingly similar to its trademark in which the Complainant has rights. The Domain Name wholly incorporates the Complainant's registered trademark. The addition of term "cosmetics" refers to the Complainant's products and does not add any distinctiveness.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent is not identified in the Whois as the Domain Name and has not acquired trademarks rights in this term. The Respondent is not affiliated with him nor authorized by him in any way to use the trademark BIODERMA in a domain name or on a website. The Domain Name resolves to a page under construction ("We are currently updating our shop and will be back really soon. Thanks for your patience") with an image for "BIODERMA" given the impression to be related with the Complainant. The Complainant contends that the Respondent not only was aware of the Complainant but deliberately targeted the Complainant to benefit from the appearance of legitimate association to the Complainant and confuse Internet users as to the source of sponsorship. A practice like this can never be considered a *bona fide* offering under the Policy.

The Complainant argues among other that the Respondent must have had knowledge of the Complainant when the Respondent registered the Domain Name. Given the use of the Domain Name, the Complainant concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

B. Respondent

The Respondent did not reply to the Complainant's contentions. However, the Respondent indicated that it was unaware of the applicable legal framework, stating *inter alia*: "Please accept our sincere apology for the uniform domain name, unfortunately we were unaware of the policy and law about the issue of uniform domain name".

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has established that it has rights in the trademark BIODERMA. The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the Domain Name. The Complainant's trademark is recognizable within the Domain Name. The Domain Name adds "cosmetics" to the trademark. The addition does not prevent a finding of confusing similarity. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.8. For the purpose of assessing the confusing similarity under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD") ".com"; see [WIPO Overview 3.0](#), section 1.11.1.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name. Based on the record, the Respondent is not affiliated or related to the Complainant. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired trademark rights. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Domain Name in connection with a *bona fide* offering of goods or services. Rather, the Respondent's use of the Domain Name is evidence of bad faith and as such cannot confer rights or legitimate interests upon the Respondent.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Domain Name was registered after the Complainant's trademarks. Based on the fame of the Complainant's trademark and the use the Domain Name, it is likely that the Respondent had knowledge of the Complainant and its trademark when the Respondent registered the Domain Name. This is further confirmed by the composition of the Domain Name, which includes the BIODERMA mark plus the addition of the term "cosmetics". Moreover, the Domain Name has been used in bad faith, even if it has only been used for a webpage under construction. The Respondent has tried to impersonate the Complainant to attract Internet users by creating a likelihood of confusion with the Complainant's trademark.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy.

The third element of the Policy has been established.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders the Domain Name <bioderma-cosmetics.com> transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: December 18, 2023