



URS | DETERMINATION
(URS Procedure 9, URS Rules 13)

URS DISPUTE NO. A89D3BEE

Determination DEFAULT

I. PARTIES

Complainant(s): BioNTech SE (DE)

Complainant(s)'s authorized representative(s): MSA IP – Milojevic Sekulic & Associates (RS)

Respondent(s): WhoisGuard Protected, WhoisGuard, Inc. (PA)

II. THE DOMAIN NAME(S), REGISTRY OPERATOR AND REGISTRAR

Domain Name(s): BIONTECH-LEAKS.ORG

Registry Operator: Public Interest Registry

Registrar: Namecheap, Inc.

III. PROCEDURAL HISTORY

Complaint submitted: 2021-02-15 13:02

Lock of the domain name(s): 2021-02-15 21:25

Notice of Complaint: 2021-02-15 21:44

Default Date: 2021-03-02 00:00

Notice of Default: 2021-03-02 09:11

Panel Appointed: 2021-03-02 09:13

Default Determination issued: 2021-03-05 11:14

IV. EXAMINER

Examiner's Name: Tobias Malte Müller

The Examiner certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as the Examiner in this administrative proceeding.

V. RELIEF SOUGHT

The Complainant requests that the domain name be suspended for the balance of the registration period.

The Respondent has not submitted a Response.

VI. STANDARD OF REVIEW

Clear and convincing evidence.

VII. DISCUSSIONS AND FINDINGS

A. Complainant:

Complainant is a next generation biotechnology company pioneering the development of novel therapies for cancer and other serious diseases. In cooperation with Pfizer, Complainant has developed a successful vaccine to induce immunity and prevent COVID-19 infections in media known as the Pfizer/BioNTech COVID-19 vaccine.

The disputed domain name incorporates Complainant's well-known BIONTECH trademark in its entirety. The addition of generic word "leaks" does not prevent confusion. The gTLD <.org> should not be taken into account when assessing confusing similarity.

Respondent has not been authorized by the Complainant to use the BIONTECH trademark in the domain name or in any other manner. The domain name is used for encouraging and inviting Complainant's employees and third parties to violate Complainant's intellectual property rights and trade secrets. Such use cannot in any event be considered as use in connection with a bona fide offering of goods or services.

The domain name is used in bad faith with intention to violate intellectual property rights and trade secrets of Complainant and to encourage others to violate those rights by leaking trade secrets. Respondent necessarily had actual knowledge of Complainant's trademark when registered the domain name, since it is used to invitation for violation of Complainant's rights. The well-known status of BIONTECH trademark due to its extensive media presence (especially in last months) makes lack of actual knowledge about the same virtually impossible.

B. Respondent:

The Respondent did not reply to the Complaint.

C. Procedural findings:

Having reviewed the communications records, the Examiner finds that MFSD has discharged its responsibility under the URS Procedure paragraphs 3 and 4 and URS Rules paragraph 4.

In accordance with URS Procedure Paragraph 9(d), in absence of a Response, the language of the Determination shall be English.

D. Findings of fact:

It results from the evidence provided that the Complainant is the registered owner of several trademarks consisting of the term BIONTECH, in particular European Union trademark No. 008964447, registered on December 22, 2010 for goods and services in classes 01, 05, 42 and 44. Complainant's BIONTECH trademark is in use for various gene therapies, mRNA pharmaceutical products and therapies and many other pharmaceutical products and medical services used in treatment of cancer, infectious diseases and other health conditions.

The disputed domain name resolves to website that under the cover of activism for wider availability of vaccine invites Complainant's employees and third parties to violate intellectual property rights and trade secrets of Complainant through anonymous delivery of Complainant's trade secrets.



E. Reasoning:

According to Paragraph 13 of the URS Rules, the Examiner shall make a Determination of a Complaint in accordance with the URS Procedure, the URS Rules and any rules and principles of law that it deems applicable.

For the Complainant to succeed, it must establish that each of the three following conditions under URS Procedure 1.2.6 are satisfied:

- That the disputed domain name is identical or confusingly similar to a word mark;
- That the Registrant has no legitimate right or interest to the disputed domain name;
- That the disputed domain name was registered and is being used in bad faith.

Respondent did not submit any Response. Despite his default, URS Procedure 1.2.6 requires Complainant to make a *prima facie* case, proven by clear and convincing evidence, for each of the above listed three elements to obtain an order that a domain name should be suspended.

1. The domain name(s) is(are) identical or confusingly similar to a word mark

Pursuant to URS Procedure 1.2.6.1, the Complainant shall first of all prove that the domain name is identical or confusingly similar to a word mark for which the Complainant holds a valid national or regional registration and that is in current use.

It results from the undisputed evidence provided that the Complainant is the registered owner of several verbal trademarks consisting of the term BIONTECH, in particular European Union trademark No. 008964447, registered on December 22, 2010 for goods and services in classes 01, 05, 42 and 44. Furthermore, Complainant gave evidence that it currently uses this BIONTECH trademark for various gene therapies, mRNA pharmaceutical products and therapies and many other pharmaceutical products and medical services used in treatment of cancer, infectious diseases and other health conditions. In fact, Complainant is one of the few companies which have developed a vaccine to induce immunity and prevent COVID-19 infections. In cooperation with Pfizer, Complainant has developed a successful vaccine in media known as the Pfizer/BioNTech COVID-19 vaccine. BIONTECH trademark is present on each of the tens of millions of vaccine bottles throughout the world.

The second level domain of the disputed domain name consists of the term “biontech”, which is therefore identical to the Complainant’s word mark, combined with the dictionary term “leaks”. Neither this addition, nor the generic TLD “.org” do affect the overall findings that the domain name is identical or confusingly similar to a word mark.

Under these circumstances, the Examiner finds that the requirements of URS Procedure 1.2.6.1 have been satisfied.

2. Respondent has no rights or legitimate interests to the domain name(s)

Pursuant to URS Procedure 1.2.6.2, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

URS Procedure 5.7 sets out examples of circumstances demonstrating bona fide registration of the domain name, e.g. if before any notice to the Respondent of the dispute, there is evidence of Respondent's use of, or demonstrable preparations to use, the domain name(s) or

a name corresponding to the domain name(s) in connection with a bona fide offering of goods or services. In this context it is to be recalled, however, that under 8.2 URS Procedure the “burden of proof shall be clear and convincing evidence”.

According to the Complaint, which has remained unchallenged, the Complainant has not authorized the Respondent’s use of the trademarks BIONTECH, *e.g.*, by registering the disputed domain name comprising said trademark entirely. Furthermore, there is no evidence in the files to indicate that Respondent is commonly known by the disputed domain name. Finally, in the absence of any response, the panel is not aware of any own trademark rights by the Respondent consisting of the term “BIONTECH”.

It is acknowledged that once the Panel finds such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. In the case at issue the Respondent decided not to submit any Response or evidence of any concrete circumstances which could demonstrate, pursuant to the URS, that it has any rights or legitimate interests in the disputed domain name.

Under these circumstances, the Examiner finds that the requirements of URS Procedure 1.2.6.2 have been satisfied.

3. The domain name(s) was(were) registered and is(are) being used in bad faith

According to URS Procedure 1.2.6.3, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. URS Procedure 1.2.6.3 identifies non-exclusive list of circumstances that Examiner could consider as constituting bad faith.

Noting that the scenarios of bad faith use and registration are non-exhaustive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant’s trademark would also satisfy the complainant’s burden. According to the Complaint and the evidence provided, which has remained unchallenged, the disputed domain name resolves to website that under the cover of activism for wider availability of COVID-19 vaccine invites Complainant's employees and third parties to violate intellectual property rights and trade secrets of Complainant through anonymous delivery of Complainant's trade secrets. Such use of a domain name, *i.e.* for *per se* illegitimate activity, can never confer rights or legitimate interests on a respondent, such behaviour is manifestly considered evidence of bad faith.

Finally, the further circumstances surrounding the disputed domain name’s registration and use confirm the findings that the Respondent has registered and is using the domain name in bad faith:

- (i) the Respondent did not provide any formal response with conceivable explanation of its behaviour within these proceedings so that no legitimate use of the disputed domain name by the Respondent is actually conceivable for the Panel; and
- (ii) since the website, to which the domain name resolves is dedicated to the invitation to violate the Complainant’s rights, the Examiner takes this as a strong indication that the Respondent clearly knew the Complainant’s trademark when registering the domain name.

In the light of the above, the Panel finds that the disputed domain name has been registered



and is being used in bad faith pursuant URS Procedure 1.2.6.3.

VIII. DETERMINATION

A. Demonstration of URS elements

Demonstrated

B. Complaint and remedy

Complaint: Accepts

Domain Name: BIONTECH-LEAKS.ORG Suspends for the balance of the registration period

C. Abuse of proceedings

Finding of abuse of proceedings: Not finds

D. Publication

Publication: Publish the Determination

SIGNATURE

Name: Tobias Malte

Surname: Müller

Date: 2021-03-05