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ARBITRATION AWARD

.IN REGISTRY - NATIONAL INTERNET EXCHANGE OF INDIA (NIXI)

.IN domain Name Dispute Resolution Policy

INDRP Rules of Procedure

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Disputed Domain Name: www.biomerieux.co.in

Decision of Ms. Pooja Dodd, Sole Arbitrator

INDRP Case No. 1109

IN THE MATTER OF:

bioMerieux,

F-69280

Marcy l'Etoile,

FRANCE

...Complainant

Versus

Doublefist Limited

Room 501, Building 4, Taoli Garden,

Huaiyin District, Huai'an City, Jiangsu Province,

China

...Respondent

1. The Parties:

- 1.1. The Complainant in this arbitration proceeding is bioMerieux, with its corporate headquarters at F-69280, Marcy L'etoile, France. The Complainant is represented by L.S. Davar & Co., 5/ 1, First Floor, Kalkaji Extension, New Delhi-110019, India.

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- 1.2. The Respondent is Doublefist Limited, at Room 501, Building 4, Taoli Garden, Huaiyin District, Huai'an City, Jiangsu Province, China. The email address connected with the Respondent is ymgroup@msn.com and the phone number connected with the Respondent is (86) 17130529989.

2. Domain Name and Registrar:

- 2.1. The Disputed Domain Name is www.biomerieux.co.in which was registered on May 25, 2016.
- 2.2. The accredited Registrar with whom the Disputed Domain Name is registered is DynaDot, LLC situated at 210 S Ellsworth Ave #345 San Mateo, CA 94401 United States of America.

3. Procedural History:

- 3.1. This arbitration proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (the "Policy"), adopted by the National Internet Exchange of India ("NIXI") and the INDRP Rules of Procedure (the "Rules"), which were approved on June 28, 2005 in accordance with the Indian Arbitration and Conciliation Act, 1996. By registering the Disputed Domain Name with a NIXI accredited Registrar, the Respondent agreed to the resolution of the disputes pursuant to the Policy and the Rules.



The history of the proceedings is as follows:

- 3.2. The Complaint was filed by the Complainant with NIXI against the Respondent. NIXI verified the Complaint and its annexures for conformity with the requirements of the Policy and the Rules.
- 3.3. On May 28, 2019, I submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by NIXI to ensure compliance with Paragraph 6 of the Rules.
- 3.4. NIXI notified the Parties of my appointment as the Arbitrator via email on June 6, 2019, and served an electronic as well as a physical copy of the Complaint on the Respondent. I informed the Parties about the commencement of arbitration proceedings on June 7, 2019 and the Respondent was directed to submit a Response within 10 days.
- 3.5. On June 18, 2019, I informed the Parties that though no Response was received from the Respondent within the time period granted, in the interest of justice, I was granting additional time of 5 days, and that if no reply was filed by June 23, 2019, the award would be passed on merits. The additional time period granted lapsed but no Response was received.

Grounds for Arbitration Proceedings

- A. The Disputed Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;



- B. The Respondent has no rights or legitimate interest in respect of the Disputed Domain Name; and
- C. The Disputed Domain Name was registered and is being used in bad faith.

4. **Summary of the Complainant's Contentions:**

In support of its case, the Complainant has made the following submissions:

- 4.1. The Complainant is a multinational biotechnology company founded in 1963 and headquartered in France. The Complainant specializes in the field of in vitro diagnostics for the medical and industrial sectors and is the world leader in these sectors. The group designs, develops, and produces a wide range of diagnosis systems for medicine and industry. It provides diagnostic solutions (reagents, instruments, software and services) which determine the source of disease and contamination to improve patient health and ensure consumer safety. The products of Complainant are mainly used for diagnosing infectious diseases. In industrial applications, they are also used for detecting microorganisms in agri-food, pharmaceutical and cosmetic products. The Complainant brings progress to laboratories by increasing automation, productivity and improving data management. The Complainant also helps reinforce the efficiency of healthcare structures and reduce healthcare costs.
- 4.2. The Complainant adopted the trade mark BIOMERIEUX, a term with no dictionary meaning, coined by the Complainant in 1963. The Complainant is listed on NYSE Euronext Paris, and the products bearing the Complainant's BIOMERIEUX mark are available in over 150 countries through 43 subsidiaries indicating its broad

international foot print. Apart from the above, the Complainant has also registered various other marks in relation to Complainant's BIOMERIEUX mark, such as API BIOMERIEUX. A perusal of Annexures 3 and 13 substantiates the claims of registrations of the Complainant's BIOMERIEUX mark in various countries.

4.3. The Complainant has invested extensively in promoting and advertising the BIOMERIEUX mark. As a result of the global reputation and goodwill acquired by the Complainant, the sales turnover of the Complainant is significant and has shown consistent growth. A perusal of Annexure 4 substantiates the claims of goodwill accrued to the Complainant's BIOMERIEUX mark.

4.4. The Complainant is the owner of the following domain names:

Sr. No.	Domain name	Creation date
i.	www.biomerieux.in	January 17, 2008
ii.	www.biomerieux.com	May 31, 1996
iii.	www.biomerieuxindia.in	January 17, 2008

The websites that resolve at the domain names owned by the Complainant contain information on the Complainant's products and function as virtual showrooms to many prospective clients. A perusal of Annexures 6 and 7 substantiates the claims of the Complainant.

4.5. The Complainant has defended its marks against deceptively similar domain names and received several decisions in its favour from the WIPO Arbitration and Mediation centre. A perusal of Annexures 8, 9, 10 and 11 substantiates the claims of the Complainant.



- 4.6. It is the case of the Complainant that the Respondent intentionally and fraudulently registered the Disputed Domain name <www.biomerieux.co.in> to trade upon and take undue advantage of the Complainant's BIOMERIEUX marks and the Complainant's Domain Names. The Disputed Domain Name is identical to the Complainant's trademark, trading name as well as the domain name. In addition to the above, the landing page of the website resolving at the Disputed Domain Name also displays the registered trade mark API of the Complainant. A perusal of Annexures 12 and 14 substantiates the claims of the Complainant
- 4.7. The Complainant alleges that the Respondent intentionally attempted to attract Internet users to the webpage resolving at the Disputed Domain Name by creating a likelihood of association with the Complainant's BIOMERIEUX mark and also, to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name. Such adoption was in bad faith, especially given the unauthorized use of the Complainant's BIOMERIEUX mark, and that the Respondent does not have any legitimate rights in the Disputed Domain Name.
- 4.8. The Complainant further submits that the registration of the Disputed Domain Name was clearly done in bad faith, as evidenced by the fact that the landing page of the Disputed Domain Name also uses well-known marks of other major companies such as ABBOTT, besides the Complainant's BIOMERIEUX mark.
- 4.9. The Respondent has adopted the Disputed Domain Name intentionally for commercial gain wherein the consumers or traders of the Complainant have been misled and diverted

to the Respondent's domain name thereby causing irreparable loss, harm and damage to the goodwill and business of the Complainant.

4.10. In support of the contentions, the Complainant has furnished copies of the following documents:

Annexure 1	Copy of the .IN Domain Name Dispute Resolution Policy
Annexure 2	The Original Power of Attorney.
Annexure 3	List of Trademark Registration and copies of registration certificates of the Complainant's BIOMERIEUX Mark.
Annexure 4	Copies of magazines/newspapers/networking platforms which evidence the substantial value to the goodwill of the trade mark BIOMERIEUX.
Annexure 5	Copy of certain invoices of the Complainant's company
Annexure 6	Printout of WHOIS database evidencing the date of creation of the Domain names/websites of Complainant
Annexure 7	Printout from the homepage of the Complainant's domain name
Annexure 8	A copy of the order dated 28.01.2018 issued by the WIPO Arbitration and Mediation center in the domain name complaint filed against the domain name <biomerieuxglobal.com>
Annexure 9	A copy of the order dated 16.08.2016 issued by the WIPO Arbitration and Mediation center in the domain name complaint filed against the domain name <uk-biomerieux.com>
Annexure 10	A copy of the order dated 11.10.2017 issued by the WIPO Arbitration and Mediation center in the domain name complaint filed against the domain name <biomerieuxgroup.com>
Annexure 11	A copy of the order dated 19.04.2017 issued by the WIPO Arbitration and Mediation center in the domain name complaint filed against the domain name <na-biomerieux.com>



Annexure 12	Printout of WHOIS database evidencing the date of creation of the Disputed Domain Name
Annexure 13	List of Trademark Registrations and copies of registration certificates of the trademark 'API' of the complainant in various countries.
Annexure 14	Printout of the screenshot of the website of Respondent as on 26 October, 2018, 28 January 2019 and 18 February 2019.
	Vakalatnama

5. Discussions and findings:

- 5.1. The submissions and documents provided by Complainant lead to the conclusion that the trade mark BIOMERIEUX forms an integral part of the Complainant's business. The Respondent does not have any relationship with the business, or authorization from of the Complainant nor does it have any legitimate interest in the Disputed Domain Name. The Respondent has registered the Disputed Domain Name to enrich itself unjustly from such adoption and registration.
- 5.2. It's a well-established principle that that once a Complainant makes a prima facie case showing that a Respondent lacks rights to the domain name at issue, the Respondent must come forward with the proof that it has some legitimate interest in the domain name to rebut this presumption.
- 5.3. The Respondent has not filed any Response to the Complaint. Paragraph 8(b) of the Rules requires that the Arbitrator must ensure that each party is given a fair opportunity



to present its case. Even though adequate time (including additional time) was granted, the Respondent chose to refrain from submitting any Response to the Complaint.

5.4. Paragraph 11(a) of the Rules empower the Arbitrator to proceed with an *ex-parte* decision in case any party does not comply with the timelines set or fails to submit a Response to the Complaint filed against it. As stated above, I initially gave the Respondent 10 days and in the absence of a Response, I granted an additional 5 days to the Respondent to file a Response. However, the Respondent failed to file any Response to the Complaint and has sought not to answer the Complainant's assertions or controvert the Complaint and the contentions raised. As a result, I find that the Respondent has been given a fair opportunity to present its case but has chosen not to come forward and defend itself.

5.5. Paragraph 12(a) of the Rules provides that the Arbitrator shall decide the Complaint based on the statements and documents submitted in accordance with the Arbitration and Conciliation Act, 1996 and any law that the Arbitrator deems fit to be applicable. In accordance with Paragraph 12 of the Rules, the Arbitrator may draw such inferences as are appropriate from the Respondent's failure to reply to the Complainant's assertions and evidence or to otherwise contest the Complaint. In the circumstances, my decision is based upon the Complainant's assertions and evidence and inferences drawn from the Respondent's failure to submit a Response, despite having been given sufficient opportunity and time.

6. **The issues involved in the Dispute:**

6.1. The Complainant invokes Paragraph 3 of the Rules to initiate an arbitration proceeding by submitting a Complaint to NIXI. The Respondent in registering a .in domain name submitted to the mandatory arbitration proceeding in terms of Paragraph 4 of the Policy, which determines the elements for filing a domain name dispute, which are;

- (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights;
- (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and
- (iii) the Registrant's domain name has been registered or is being used in bad faith.

These elements are discussed below in tandem with the facts and circumstances of this case.

Element (i)- The Respondent's domain name is identical/confusingly similar to a name, trade mark or service mark in which the Complainant has rights:

6.2. I am of the view that the Complainant has provided sufficient evidence proving that it is the owner of the BIOMERIEUX mark, arising out of prolonged use and registration. The domain name in issue <www.biomerieux.co.in> contains the Complainant's BIOMERIEUX mark in its entirety. Numerous panels have found that the fact that a domain name wholly incorporates a complainant's registered mark, is sufficient to establish identical/confusingly similarity to a name, trade mark or service mark in which the Complainant has rights, for purposes of the Policy. [Decisions relied upon: 7 Eleven



Inc. vs. Kornelius Wietska – INDRP case no. 1073; Britannia Building Society v. Britannia Fraud Prevention, WIPO Case no. – D2001-0505; Alpha One Foundation, Inc. vs. Alexander Morozov, NAF Case No. 766380, Amazon.com Inc., Amazon Technologies, Inc. v. Giovanni Laporta -Yoyo.Email D2015-0009; International Buiness Machines Corporation vs. Zhu Xumei INDRP case no. 646, Jaguar Land Rover vs. Yitao INDRP case no. 641]

- 6.3. Considering the Complaint and the accompanying documents placed before me, it is proved beyond doubt that the Complainant has well established propriety rights to the BIOMERIEUX mark and that the Disputed Domain Name is virtually identical and confusingly similar to the Complainant's BIOMERIEUX mark and related domains as well as the Complainant's trading name. Registration of such a domain being identical and confusingly similar to the Complainant's BIOMERIEUX mark will inevitably lead consumers to believe that the Disputed Domain Name is affiliated in some way to the Complainant. Thus, I find that Element (i) has been satisfied.

Element (ii) - The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:

- 6.4. Through its Complaint and the accompanying documents, the Complainant has established that it never authorized or licensed the Respondent to use the Complainant's BIOMERIEUX mark and that the Respondent does not have any relationship or business association with the Complainant. Considering that the Respondent registered the Disputed Domain Name on May 25, 2016 which is more than (5) five decades after the Complainant first used the trade mark BIOMERIEUX, the Respondent cannot be said



to have any legitimate interest in the Disputed Domain Name. [Decisions relied upon: Deutsche Telekom AG v. Phonetic Ltd., WIPO Case No. D2005 – 1000; LEGO Juris A/S v. Domain Park Ltd, David Smith, Above.com Domain Privacy, Transure Enterprise Ltd, Host master, WIPO Case No. D2010-0138; Marriott International, Inc. v. Thomas, Burstein and Miller, WIPO Case No. D2000-0610; Orange Brand Services Limited vs. P.R.S. Reddy <orangesms.in> - INDRP case no. 644; The Ritz Carlton Hotel Company LLC v. Nelton! Brands inc., INDRP case no. 250].

- 6.5. The word BIOMERIEUX has no dictionary meaning and has been coined by the Complainant. Therefore, there is no plausible explanation as to how the Respondent can have any legitimate interest with respect to the Disputed Domain Name.
- 6.6. Once the Complainant has established a prima facie case, the burden of proof to establish any legitimate interests over the Disputed Domain Name falls on the Respondent, and by not responding to the Complaint within the timeline set, the Respondent has failed to establish legitimacy in registering the Disputed Domain Name. Thus, I find that Element (ii) has been satisfied.

Element (iii) - The domain name in question should be considered as having been registered and being used in bad faith.

- 6.7. Complainant's use and registrations of the BIOMERIEUX mark predate Respondent's registration of the Disputed Domain Name. Given the fanciful nature of the coined BIOMERIEUX mark, and the sequence of events, it is a reasonable presumption that the Respondent was aware of the Complainant's BIOMERIEUX mark when the Disputed Domain Name was registered, and Respondent chose the Disputed Domain

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Names intentionally for the purpose of trading on the value of Complainant's mark. [Swarovski Aktiengesellschaft v. WhoisGuard, Inc. / Person, Johnny D., WIPO Case no. D2013-1450, zingermetall BVBA v. Mister Alexy Navalny – INDRP case no. 639, Yola Inc, v. Karan INDRP case no. 154]

- 6.8. The fact that Respondent has parked a website on the Disputed Domain Name that attempts to illegally attract traffic by misrepresenting the Disputed Domain Name as that of the Complainant to unjustly enrich itself as well as the use of other trade marks that are neither licensed nor authorised, including the Complainant's API mark is sufficient evidence of bad faith in the registration of the Disputed Domain Name by the Respondent. Thus, I find that Element (iii) has been satisfied

Decision:

- 6.9. In view of the foregoing, I am convinced that the Disputed Domain Name is confusingly similar to the Complainant's BIOMERIEUX mark. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name and that the Disputed Domain Name was registered in bad faith. In accordance with the Policy and Rules, I direct that the Disputed Domain Name be transferred to the Complainant, with a request to NIXI to monitor the transfer.
- 6.10 In the facts and circumstances as discussed above, the Respondent is also ordered to pay to the Complainant, costs of ₹1,00,000 (Rs. One Lakh).



This award is being passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.

A handwritten signature in black ink, appearing to read 'Pooja Dodd', with a horizontal line drawn underneath the signature.

Pooja Dodd

Sole Arbitrator

Dated: July 12, 2019