

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Privacy service provided by Withheld for Privacy ehf / farm construction, BAYERCROP POLAND
Case No. D2022-1043

1. The Parties

The Complainant is Bayer AG, Germany, represented by BPM Legal, Germany.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / farm construction, BAYERCROP POLAND, India.

2. The Domain Name and Registrar

The disputed domain name <agrobayer-pl.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 25, 2022. On March 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 25, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 30, 2022 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 April 4, 2022.

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 April 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 6, 2022.

The Center appointed Federica Togo as the sole panelist in this matter on May 23, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is the registered owner of trademarks in several jurisdictions for the term “BAYER”, e.g. International registration No. 1462909 registered on November 28, 2018, for several goods and services in the Classes 1, 3, 5, 9, 10, 31, 35, 41, 42 and 44 and designating several countries worldwide, amongst others India, where the Respondent is located.

The disputed domain name was registered on January 5, 2022, and resolves to an inactive webpage.

5. Parties’ Contentions

A. Complainant

It results from the Complainant’s undisputed allegations that it is a global enterprise with core competencies in the fields of healthcare, nutrition and plant protection. Its global headquarters are in Germany and its stock is included in nearly all the major share indices, traded on all German stock exchanges and included in the DAX 40, a Blue-Chip stock market index consisting of the 40 major German companies trading on the Frankfurt Stock Exchange and it is regularly listed beyond the world’s leading companies in various categories. Moreover, it is represented by over 250 affiliates and has more than 115,000 employees worldwide. The Complainant, itself or through the subgroups like HealthCare and CropScience, does business on all five continents, manufacturing and selling numerous of products, *inter alia* human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals. The Complainant provides information on its subgroup CropScience online *inter alia* at “www.cropscience.bayer.com.” In some countries, the Complainant also uses the word “agro” to market its CropScience products, *inter alia* in Poland (“www.agro.bayer.com.pl”)

Furthermore, the Complainant has a strong presence on the Internet and uses hundreds of domain names including the term “bayer”, in order to promote its products and services, e.g. <bayer.com> and <bayer.com.pl>.

The Complainant contends that its trademark BAYER is distinctive and well-known worldwide.

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant’s earlier trademark, since it fully incorporates the Complainant’s trademark. The additional words “agro” and “pl” are merely generic and not suitable to eliminate the similarity between the Complainant’s trademark and the disputed domain name, on the contrary they will confuse Internet users as referring directly to one of the Complainant’s subgroups, which uses the domain name <agro.bayer.com.pl> to provide information on its products.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the BAYER trademarks are well-known and obviously connected with the Complainant and its products. The term “bayer” is not a word one would legitimately choose unless seeking to create an impression of an association with the Complainant. In addition, the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks nor to apply for or use any domain name incorporating the BAYER trademarks. The disputed domain name is part of a larger fraud complex, where the Respondent is using domain names in connection with scam emails. In the present case, the disputed domain name has been used in connection with at least one email address: “careers@agrobayer-pl.com.”

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. In fact, the term “bayer” is not a word a domain name registrant would legitimately choose unless seeking to create an impression of an association with the Complainant. It is inconceivable that the Respondent registered the disputed domain name unaware of the Complainant and its rights in its highly distinctive and well-known BAYER trademarks. In addition, the circumstances of the case clearly indicate that the disputed domain name is just another one to be used in connection with Respondent’s fraudulent activities and therefore in bad faith under paragraph 4(b)(iv) of the Policy.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”. Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

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

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided that the Complainant is the registered owner of several trademark registrations for BAYER.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant’s trademark where the disputed domain name incorporates the complainant’s trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.7).

This Panel shares this view and notes that the Complainant’s registered trademark BAYER is fully included in the disputed domain name, preceded by the term “agro” and followed by a hyphen and the letters “pl”. Furthermore, it is the view of this Panel that the addition of the term “agro”, the letters “pl” and the hyphen in the disputed domain name cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant’s trademark since the Complainant’s trademark is clearly recognizable in the disputed domain name (see [WIPO Overview 3.0](#) at section 1.8).

Finally, the generic Top-Level Domain (“gTLD”) “.com” of the disputed domain name may be disregarded under the first element confusing similarity test (see [WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark BAYER, e.g. by registering the disputed domain name comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain name contains the Complainant's registered and well-known trademark BAYER and that the trademark BAYER is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondent selected the disputed domain name with the intention to take advantage of the Complainant's reputation by registering a domain name fully containing the Complainant's trademark with the intent to attract Internet users for commercial gain (e.g., *Carrefour SA v. Matias Barro Mares*, WIPO Case No. [D2020-3088](#); *Koc Holding A.S. v. VistaPrint Technologies Ltd*, WIPO Case No. [D2015-0886](#)).

It is acknowledged that once the Panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. (see [WIPO Overview 3.0](#) at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

Based on the evidence submitted by the Complainant, the Panel shares the view of other UDRP panels and finds that the Complainant's trademark BAYER is widely known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain name consisted of the Complainant's trademark when registered the disputed domain name. Registration of the disputed domain name in awareness of the reputed BAYER mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith (see e.g., *Carrefour SA v. Matias Barro Mares*, WIPO Case No. [D2020-3088](#); *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#)).

The Panel notes that the Complainant failed to provide evidence regarding the assertion that the disputed domain name has been used in connection with scam emails for illegal activity. However, the Panel does not find that to be conclusive in the circumstances of this case.

The disputed domain name does not resolve to an active website. In this regard, the Panel notes that the passive holding does not preclude a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). In fact, the further circumstances surrounding the disputed domain name's registration and use confirm the findings that the Respondent has registered and is using the disputed domain name in bad faith: (1) the Complainant's trademark BAYER is widely known; (2) the Respondent failed to submit a formal response or to provide any evidence of actual or contemplated good-faith use; (3) the Respondent originally used a privacy service hiding his identity; and (4) the implausibility of any good faith use to which the disputed domain name may be put (see [WIPO Overview 3.0](#) at section 3.3).

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 to paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <agrobayer-pl.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: June 6, 2022