

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Yani Herzog and Yani Herzog, BYer Case No. D2023-2074

1. The Parties

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

Respondents are Yani Herzog, Thailand and Yani Herzog, BYer, Philippines.¹

2. The Domain Names and Registrars

The disputed domain name <bayer-plc.com> is registered with NameCheap, Inc. (the “First Registrar”). The disputed domain name <bayer-plc.net> is registered with eNom, LLC (the “Second Registrar”). Together, both domain names are referred to herein as the “Disputed Domain Names.”

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 10, 2023 in respect of the disputed domain name <bayer-plc.com>. On May 10, 2023, the Center transmitted by email to the First Registrar a request for registrar verification in connection with that disputed domain name. On the same date, the First Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name <bayer-plc.com> which differed from the named Respondent (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to Complainant on May 16, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On May 24, 2023, Complainant filed an amended Complaint in which it added the disputed domain name <bayer-plc.net>. On May 24, 2023, the Center transmitted by email to the Second Registrar a request for registrar verification in connection with the additional disputed domain name. On the same date, the Second Registrar transmitted by email to the Center its verification response confirming that Respondent Yani Herzog, BYer is listed as registrant and its contact details.

The Center verified that the Complaint together with the amended Complaint (referred to hereafter simply as the “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”).

¹ While the Panel notes that for the purposes of the registration details of the Disputed Domain Names, two different countries were provided, noting that the registrant details show the same name and email address, the Panel will refer to the registrant of the Disputed Domain Names as Respondent.

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on May 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 15, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on June 26, 2023.

The Center appointed Douglas M. Isenberg as the sole panelist in this matter on July 14, 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 by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

Complainant states that it is "a global enterprise with core competencies in the fields of healthcare, nutrition and plant protection"; that its "stock is included in nearly all the major share indices, traded on all German stock exchanges and included in the DAX40, a Blue-Chip stock market index consisting of the 40 major German companies trading on the Frankfurt Stock Exchange"; that it "is represented by over 374 consolidated companies in 83 countries and has more than 101,000 employees worldwide"; and that "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."

Complainant further states, and provides documentation in support thereof, that it "is the owner of about 700 registrations and pending applications of the word mark BAYER alone, including the international trademarks nos. 1462909 and 1476082 for BAYER registered since November 28, 2018 and December 10, 2018, respectively." These are referred to herein as the "BAYER Trademark."

The Disputed Domain Names were created on March 24, 2023 (<bayer-plc.com>) and April 5, 2023 (<bayer-plc.net>) and are not being used in connection with active websites.

5. Parties' Contentions

A. Complainant

Complainant contends, in relevant part, as follows:

- Each of the Disputed Domain Names is confusingly similar to the BAYER Trademarks because each of them "fully incorporate[s]" the BAYER Trademark.
- Respondent has no rights or legitimate interests in respect of either of the Disputed Domain Names because, *inter alia*, "Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the" BAYER Trademark; "there is no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy" because "the Respondent is not actively using the disputed domain names in any way"; and "there is also no evidence which suggests that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names or is commonly known by the disputed domain names or the name 'BAYER-PLC'."
- Each of the Disputed Domain Names was registered and is being used in bad faith because, *inter alia*, "based on the Complainant's high profile worldwide and the fact, that the Respondent deliberately targets the Complainant by registering the name of its UK subsidiary Bayer plc, it is inconceivable that the Respondent registered the disputed domain names unaware of the Complainant and its rights in its highly distinctive and well-known" BAYER Trademark; the passive-holding doctrine applies here because the BAYER Trademark is "highly distinctive and well-known," "Respondent had provided no evidence whatsoever of any actual or

contemplated good faith use,” the Disputed Domain Names “clearly target the Complainant and its UK subsidiary Bayer plc,” and “from all of the circumstances, there does not appear to be any possible or conceivable good faith use of the disputed domain names that would not be illegitimate”; and “[t]he fact that the Respondent registered domain names which include a trademark that is obviously connected with the Complainant and its products also supports the finding of bad faith as the very use of such domain names by someone with no connection with the products suggests opportunistic bad faith.”

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Pursuant to the Policy, Complainant is required to prove the presence of each of the following three elements to obtain the relief it has requested, with respect to each of the Disputed Domain Names: (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) 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. Policy, paragraph 4(a).

A. Identical or Confusingly Similar

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the BAYER Trademark.

As to whether the Disputed Domain Names are identical or confusingly similar to the BAYER Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Names only (i.e., “bayer-plc”) because “[t]he applicable Top-Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1.

As set forth in section 1.7 of [WIPO Overview 3.0](#): “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.” Also, as set forth in section 1.8 of [WIPO Overview 3.0](#): “Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms... would not prevent a finding of confusing similarity under the first element.”

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

B. Rights or Legitimate Interests

Complainant has argued that Respondent has no rights or legitimate interests in respect of the Disputed Domain Names because, *inter alia*, “Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the” BAYER Trademark; “there is no evidence of the Respondent’s use of, or demonstrable preparations to use the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy” because “the Respondent is not actively using the disputed domain names in any way”; and “there is also no evidence which suggests that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names or is commonly known by the disputed domain names or the name ‘BAYER-PLC’.”

[WIPO Overview 3.0](#), section 2.1, states: “[w]hile 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.” The Panel also notes that the composition of the Disputed Domain Names carries a risk of implied affiliation. In this regard, the Panel specifically notes that the disputed domain name <bayer-plc.com> corresponds to the name of Complainant’s subsidiary in UK.

The Panel finds that Complainant has established its *prima facie* case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Whether a domain name is registered and used in bad faith for purposes of the Policy may be determined by evaluating four (non-exhaustive) factors set forth in the Policy: (i) circumstances indicating that the registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the registrant’s website or location or of a product or service on the registrant’s website or location. Policy, paragraph 4(b).

As set forth above, neither of the Disputed Domain Names is associated with an active web page. As set forth in section 3.3 of [WIPO Overview 3.0](#):

“From the inception of the UDRP, panelists 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 panelists 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.”

Citing *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Here, for the reasons described above, it is apparent that the BAYER Trademark is very distinctive, and multiple previous panels have referred to the mark as “well known.” See, e.g., *Bayer Aktiengesellschaft v. K Dangos*, WIPO Case No. [D2002-0138](#) (“Bayer is a very powerful and well known trademark”). Further, Respondent has not submitted a response, Respondent used privacy services to conceal its identity, and it is implausible that the Disputed Domain Names could be put to any good faith use.

Accordingly, the Panel finds that Complainant has proven the third element 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 names, <bayer-plc.com> and <bayer-plc.net>, be transferred to the Complainant.

/Douglas M. Isenberg/

Douglas M. Isenberg

Sole Panelist

Date: July 14, 2023