

ADMINISTRATIVE PANEL DECISION

Bayer AG v. HarmonWeb Solutions, Daniel Nas
Case No. D2023-3084

1. The Parties

The Complainant is Bayer AG, Germany, represented by pm.legal, Germany.

The Respondents are Daniel Nas, United States of America, and HarmonWeb Solutions, Nigeria.

2. The Domain Name and Registrar

The disputed domain names <bayertrade.com> (the “first disputed domain name”) and <bayertrades.com> (the “second disputed domain name”) are registered with NameCheap, Inc. and NameSilo, LLC respectively (the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 19, 2023. On July 19, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On July 19 and July 27, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the first disputed domain name which differed in respect of the first-named Respondents (Redacted for Privacy, Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 3, 2023, with the registrant and contact information of the underlying registrants provided by the Registrars and requesting the Complainant to either file separate complaints for the disputed domain names or alternatively, demonstrate that the underlying registrants are in fact the same entity. The Complainant filed an amended Complaint on August 8, 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 Respondents of the Complaint and the proceedings commenced on August 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 30, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondent’s default on September 1, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on September 18, 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

The Complainant is a global business which is active in many sectors, particularly healthcare, nutrition, and plant protection. The Complainant's predecessor company was established in 1863 and it now operates in 83 countries, with more than 99,000 employees worldwide. The Complainant's primary brand is BAYER and it owns multiple trade marks in many countries to protect this trading style. These include, by way of example only, International Trade Mark for BAYER, registration No. 1462909, in multiple classes, registered on November 28, 2018. The Complainant also owns many domain names which comprise or include its BAYER mark, including <bayer.com> and <bayer.us>.

The disputed domain names were registered on May 31, 2023, and July 4, 2023, respectively. The Complainant has provided screenshots of the website to which the second disputed domain name resolved at, or about, the time the Complaint was filed. This featured a stylized logo for BAYER TRADE, beneath which was a URL for the website "www.bayertrade.com". The Respondent's website claimed to be "The Premier Destination For Secure And Profitable Cryptocurrency Investments". An address in Germany, which is the Complainant's principal place of business, was given as the Head Office address for the Respondent's business. One page of the website, headed "Who We Are", stated that the Respondent is a "Subsidiary Of Bayer.Com That Combines The World Of Health And Agriculture With The Exciting Realm Of Cryptocurrency Investment". The Testimonials section of the website is incomplete and is populated with *lorem ipsum* text. There is no evidence that the first disputed domain name has resolved to an active website and, in fact, neither of the disputed domain names now resolves to an active website.

5. Procedural issue – Consolidation - multiple Respondents

The amended Complaint was filed in relation to nominally different disputed domain name registrants. The Complainant alleges that the disputed domain name registrants are the same entity and/or that the disputed domain names are under common control. The Complainant requests the consolidation of the Complaint against both disputed domain name registrants pursuant to paragraph 10(e) of the Rules. The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. In addressing the Complainant's request, the Panel considers whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties; see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2., and *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#).

As regards common control, the Panel notes that both disputed domain names were registered within a few weeks of each other, that the website at the site of the second disputed domain name included a URL, positioned underneath a logo, which was specifically referred to the first disputed domain name and that, save for the pluralization of "trade" to "trades" in the second disputed domain name, the disputed domain names are identical.

The factors to which the Complainant has drawn attention indicate that the Respondents – if they are in fact truly different individuals – are acting in concert in order to fulfil a common design and that the disputed domain names are under common control. Moreover, the Panel notes that neither Respondent has challenged the Complainant's assertions as to why consolidation is appropriate.

In these circumstances, it is procedurally efficient, as well as fair and equitable to all Parties, for the Complainant's case in respect of both disputed domain names to be dealt with in a single Complaint. The Panel therefore grants the Complainant's request for consolidation and the named Respondents are collectively referred to below as "the Respondent".

6. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names. Notably, the Complainant contends that:

- the disputed domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights. Each disputed domain name incorporates the Complainant's well-known BAYER trade mark and adds a term, which does not eliminate its similarity with the Complainant's mark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain names. The BAYER marks are obviously connected with the Complainant and "bayer" is not a term which a domain name registrant would legitimately choose to register unless seeking to create an association with the Complainant's marks. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trade marks or to apply for any domain name incorporating its marks. Nor are the disputed domain names used in connection with a *bona fide* offering of goods and services in that they have been used by the Respondent to host a commercial website which creates the false impression that the Respondent is part of the Complainant's business. Lastly, there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain names;
- the disputed domain names were registered and are being used in bad faith. It is inconceivable that the Respondent registered them whilst unaware of the Complainant's rights in its distinctive and well-known BAYER marks. By using the disputed domain names in connection with its website, the Respondent is seeking to divert traffic intended for the Complainant's website to its own website for the purpose of earning revenues from the diversion of Internet users. The fact that the disputed domain names include a trade mark which is so obviously connected with the Complainant and its products supports a finding of bad faith and the very use of the disputed domain names by someone with no connection to the Complainant or its products suggests opportunistic bad faith.

B. Respondent

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

7. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in respect of each disputed domain name in order to succeed in its Complaint in relation to it: (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain names; see the [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of its BAYER trade mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in the case of each of the disputed domain names, is usually disregarded when assessing confusing similarity. The Complainant's BAYER mark is reproduced in its entirety within each of the disputed domain names and is clearly recognizable within them. In these circumstances, the additional terms within the disputed domain names (namely "trade" and "trades" respectively) do not prevent a finding of confusing similarity between them and the Complainant's mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that 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 the [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 disputed domain names. 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 disputed domain names. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain names in connection with a *bona fide* offering of goods or services; see paragraph 4(c)(i) of the Policy, and the [WIPO Overview 3.0](#), section 2.2. UDRP panels have held that the use of a domain name for illegal activity, including impersonation/passing off, can never confer rights or legitimate interests on a respondent; see the [WIPO Overview 3.0](#), section 2.13.1. Accordingly, the use of the second disputed domain name to resolve to a website promoting services ostensibly provided by the Respondent relating to cryptocurrency trading, which falsely claims that the Respondent is a member of the Complainant's group of companies in order to piggy back off the Complainant's reputation and mislead Internet users, does not comprise a *bona fide* use of it. Additionally, the partially complete state of the Respondent's website raises doubts as to whether its website, when active, was actually engaging in any form of business activity; see, by way of example, *ACO Severin Ahlmann GmbH & Co. KG v. Whois Privacy Protection Foundation / John Smith*, WIPO Case No. [D2021-4123](#);
- there is no evidence in the record that the Respondent has been commonly known by either of the disputed domain names; see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;

- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the fact that, at present, both disputed domain names do not resolve to active websites has the consequence that neither of them is being used in connection with a *bona fide* offering of goods and services;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain names.

For the above reasons, 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 Respondent has used the second disputed domain name to resolve to a website which purported to offer cryptocurrency trading services as a member of the Complainant's group of companies. Having regard to the confusing similarity between the Complainant's BAYER mark and the second disputed domain name, coupled with the use to which it has been put following registration, the Panel finds that the Respondent was aware of the Complainant as at the date of registration of the second disputed domain name and registered it in order to take unfair advantage of the Complainant's mark. It is well-established under the Policy that registration of a domain name by an unconnected party with knowledge of a complainant's trade mark registration and where the domain name is put to a misleading use establishes bad faith. The Panel therefore finds the Respondent's registration of the second disputed domain name to have been in bad faith. In the circumstances of these proceedings, particularly the use made of the second disputed domain name, the Respondent cannot have had in mind a good faith use of the first disputed domain name when registering it, and the Panel therefore finds that its registration by the Respondent was also in bad faith.

For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, 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 Respondent's previous use of the second disputed domain name has been in bad faith in that it has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website; see paragraph 4(b)(iv) of the Policy, the [WIPO Overview 3.0](#), section 3.1.4. and, by way of example, *Bayer AG v. Whoisprotection.cc / Drago Price, Bayer*, WIPO Case No. [D2020-0051](#).

So far as the current inactive use of both disputed domain names is concerned, prior UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Whilst 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 and (iv) the implausibility of any good faith use to which the domain name may be put by the respondent; See the [WIPO Overview 3.0](#), section 3.3 and *Bayer AG v. Yani Herzog and Yani Herzog, Byer*, WIPO Case No. [D2023-2074](#). Save that the registrant details for the second disputed domain name were not concealed by a privacy service, each of the factors set out above, in the circumstances of these proceedings, is supportive of a finding of bad faith passive holding on the part of the Respondent. The Panel accordingly finds that the passive holding of both disputed domain names by the Respondent comprises bad faith use under the Policy.

For the above reasons, the Panel finds the Respondent's registration and use of the disputed domain names is in bad faith and that the third element of the Policy has been established.

8. 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, <bayertrade.com> and <bayertrades.com>, be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: October 2, 2023