

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Angelo Bayer

Case No. D2023-1824

1. The Parties

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

Respondent is Angelo Bayer, Sierra Leone.

2. The Domain Name and Registrar

The disputed domain name <bayerrecruitment.com> is registered with Launchpad.com Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 24, 2023. On April 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 25, 2023, 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 (John Doe) and contact information in the Complaint. The Center sent an email communication to Complainant on April 26, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. The proceeding was suspended on April 28, 2023 for purposes of settlement discussions concerning the disputed domain name. The proceeding was reinstated on July 3, 2023. Complainant filed an amended Complaint on June 27, 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 Respondent of the Complaint, and the proceeding commenced on July 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 24, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 25, 2023.

The Center appointed Brian J. Winterfeldt as the sole panelist in this matter on August 1, 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 is a global company headquartered in Germany. The company is in the fields of healthcare, nutrition and plant protection. Complainant employs more than 99,000 employees globally and has a presence in 83 countries and in all 5 continents. The company manufactures and sells numerous pharmaceutical and medical care products, diagnostic products, and agricultural chemicals.

Complainant owns approximately 700 trademark applications and registrations for the word mark BAYER (“BAYER Mark”) worldwide covering an extensive range of goods and services, such as International trademark BAYER number 1462909, registered on November 28, 2018. Complainant’s BAYER Marks have been deemed well-known across multiple UDRP decisions over the last 20 years. Complainant also maintains an Internet presence via many websites, including one hosted at “www.bayer.com”.

The disputed domain name was registered on December 19, 2022. The disputed domain name resolves to a largely empty website with a WordPress blog template. Respondent’s physical address in the underlying registrant data showed a street address in Bratislava, Slovakia, but the country of Sierra Leone, and DHL was unable to reach the listed physical address by mail.

5. Parties’ Contentions

A. Complainant

Complainant submits that it owns registered rights in the BAYER Mark and that the disputed domain name wholly incorporates their mark and is confusingly similar thereto. Furthermore, Complainant submits that the additional word “recruitment” does not eliminate the similarity between Complainant’s mark and the disputed domain name. Complainant also notes that the Top-Level Domain is generally not taken into consideration when evaluating confusing similarity.

Next, Complainant contends that Respondent has no rights or legitimate interests in respect of the disputed domain name. Complainant provides *prima facie* evidence of Respondent’s lack of rights or legitimate interests in order to shift the burden of production to Respondent. Complainant submits that the BAYER Mark is not a word that any market participant or other domain would legitimately choose unless seeking association with Complainant. Complainant also submits that Respondent is not licensed or otherwise permitted to use any of Complainant’s marks and that Respondent has not been permitted to apply for or use any domain name incorporating the BAYER Marks. Complainant asserts that it found no evidence that Respondent has use of or preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Complainant also contends that it has found no evidence which suggests that Respondent is making a legitimate noncommercial or fair use of the disputed domain name, nor is Respondent commonly known by the disputed domain name.

Lastly, Complainant asserts that Respondent registered and is using the disputed domain name in bad faith. Complainant argues that since “bayer” is not a word that a registrant would choose unless seeking association with Complainant, Respondent must have registered the disputed domain name in bad faith. Furthermore, Complainant contends that based on its global high profile, it is inconceivable that Respondent registered the disputed domain name unaware of Complainant or its rights in the BAYER Marks. Next, Complainant maintains that due to the use of the disputed domain name for a “dummy” website, it is likely that Respondent is trying to divert Internet traffic intended for Complainant’s website to Respondent’s website for commercial gain. Complainant submits that Respondent’s registration of the disputed domain name prevents Complainant from reflecting its own BAYER marks in a corresponding domain name. Complainant also contends that Respondent’s use of the disputed domain name disrupts Complainant’s

business by reducing the number of Internet users who visit Complainant's website and thus constitutes bad faith. Finally, Complainant asserts that the registration of the disputed domain name by Respondent amounts to "an abusive threat" which is also evidence of a finding of bad faith.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (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 was registered and is being used in bad faith.

A respondent's default does not by itself satisfy a complainant's burden of proof and is not necessarily an admission that the complainant's allegations are true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Thus, even though Respondent has failed to address Complainant's contentions, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence. See, e.g., *Vente-Privee.Com v. Tang Tang Shang, Tang Shan*, WIPO Case No. [D2021-1350](#).

A. Identical or Confusingly Similar

Ownership of a national or international trademark registration is *prima facie* evidence that the holder has the requisite rights in the registered mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant provided evidence that it owns rights in the BAYER Mark through its trademark registrations referenced *supra*. Thus, Complainant has established its trademark rights as required by the Policy.

The remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's BAYER Mark (typically disregarding the generic Top-Level Domain ("gTLD") in which the domain name is registered, e.g. ".com"). It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". [WIPO Overview 3.0](#), section 1.7. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. *Id.*

The disputed domain name fully incorporates the BAYER Mark. The addition of the term "recruitment" do not prevent a finding of confusing similarity between the disputed domain name and Complainant's BAYER Mark. See [WIPO Overview 3.0](#), section 1.8 ("[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.").

The Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing their trademark rights and showing that the disputed domain name is confusingly similar to Complainant's BAYER Mark.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, Complainant must make at least a *prima facie* showing that Respondent possesses no rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1. The burden of production shifts to Respondent once Complainant makes such a *prima facie* showing, though the burden of proof always remains on Complainant. Complainant will have sustained its burden under the second element of the UDRP if Respondent fails to come forward with evidence showing rights or legitimate interests.

Paragraph 4(c) of the Policy lists the ways in which Respondent may demonstrate rights or legitimate interests in the disputed domain name:

- (i) before any notice of the dispute, Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Respondent's use of the disputed domain name for a largely empty WordPress blog template website does not evidence any legitimate noncommercial or fair use of the disputed domain name, nor any *bona fide* offering of goods or services. Respondent has failed to come forward with any evidence showing rights or legitimate interests in the disputed domain name, nor has Respondent submitted any arguments or evidence to rebut Complainant's contention that it never authorized, licensed or permitted Respondent to use the BAYER Mark in any way.

Though Respondent listed their surname as "Bayer", Respondent failed to respond to Complainant's multiple attempts to reach Respondent. Moreover, Respondent registered the disputed domain name using a physical address including a street address in Bratislava, Slovakia and Sierra Leone as the country, which demonstrates Respondent provided false contact details. Due to Respondent's failure to respond or proffer any evidence whatsoever that "Bayer" is indeed their surname, and due to Respondent's use of a false physical address, the Panel does not believe Respondent is commonly known by "Bayer", "Bayerrecruitment", or the disputed domain name.

Moreover, the nature of the disputed domain name carries a risk of implied affiliation. UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1. The disputed domain name incorporates Complainant's BAYER Mark and the term "recruitment"; thus, it cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by Complainant. *Id.*

Complainant also provided evidence supporting their *prima facie* claim that Respondent lacks any rights or legitimate interests in the disputed domain name. Respondent, having defaulted, failed to refute Complainant's allegations.

Accordingly, the Panel finds that Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Where a respondent takes unfair advantage of or otherwise abuses a complainant's mark, bad faith occurs.

Paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- “(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent 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 respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 respondent's website or location or of a product or service on the respondent's website or location.”

Complainant provided sufficient evidence regarding its widespread use and registration of the BAYER mark which clearly predates Respondent's registration of the disputed domain name. Consequently, it is highly likely that Respondent was aware of Complainant and its rights in the BAYER Mark when it registered the disputed domain name. See [WIPO Overview 3.0](#), section 3.2.1; see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The disputed domain name's resolution to a website with a seemingly unaltered WordPress template demonstrates that Respondent is passively holding the disputed domain name. Passive holding of a domain name does not prevent a finding a bad faith. See [WIPO Overview 3.0](#), section 3.3 (“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.”).

Furthermore, Complainant provided sufficient evidence to support a finding that Respondent registered the disputed domain name with the intention of taking advantage of Complainant's reputation and misleading Internet users for Respondent's benefit. Respondent's use of false contact details (including a “Bayer” surname) to conceal their true identity is also indicative of bad faith registration and use. See [WIPO Overview 3.0](#), section 3.6; see also *Pfizer Inc. v. Ubrokerage inc*, WIPO Case No. [D2015-1927](#).

The Panel finds that Respondent registered and used the disputed domain name in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

7. Decision

In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, and for the abovementioned reasons, the Panel orders that the disputed domain name <bayerrecruitment.com> be transferred to Complainant.

/Brian J. Winterfeldt/

Brian J. Winterfeldt

Sole Panelist

Date: Aug 11, 2023