

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Carolina Rodrigues, Fundacion Comercio Electronico
Case No. D2023-2246

1. The Parties

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

Respondent is Carolina Rodrigues, Fundacion Comercio Electronico, Panama.

2. The Domain Name and Registrar

The disputed domain name <bayerenergy.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 24, 2023. On May 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 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 (Domains by Proxy LLC) and contact information in the Complaint. The Center sent an email communication to Complainant on May 26, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on May 29, 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 proceedings commenced on June 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on June 28, 2023.

The Center appointed Jeffrey M. Samuels as the sole panelist in this matter on July 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

Complainant Bayer AG is a global enterprise that does business in the fields of healthcare, nutrition, and plant protection. Complainant is represented by over 374 consolidated companies in 83 countries and has more than 99,000 employees worldwide.

Complainant owns about 700 registrations and pending applications for the word mark BAYER, including international trademark Nos. 1462909, registered on August 15, 2019, and 1476082, registered on December 10, 2018. Complainant has used the BAYER trademark in the making and marketing of pharmaceutical products since 1888. Complainant also owns hundreds of domain name registrations that feature the term “bayer”, including <bayer.com> and <bayer.co>.

The disputed domain name, <bayerenergy.com>, was registered on January 16, 2023, and resolves to a website featuring advertising links to third party websites.

5. Parties' Contentions

A. Complainant

Complainant asserts that the disputed domain name is identical or confusingly similar to its BAYER trademark. It points out that the disputed domain name incorporates, in full, the BAYER mark and that the additional word “energy” is merely generic and does not eliminate the similarity between the BAYER mark and the disputed domain name.

Complainant further contends that Respondent has no rights or legitimate interests in the disputed domain name. Complainant indicates that Respondent is not licensed or otherwise permitted to use any domain name incorporating the BAYER mark, that there is no evidence of Respondent's use of, or demonstrable preparations to use, the disputed domain name with a *bona fide* offering of goods or services, and that there is no evidence suggesting that Respondent is making a legitimate noncommercial or fair use of the disputed domain name or is commonly known by the disputed domain name or the name “Bayer Energy”.

With respect to the issue of bad faith registration and use, Complainant maintains that “Bayer” is not a word a domain name registrant would legitimately choose unless seeking to create an association with Complainant and that “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 Marks”.

Complainant also alleges that, by using the disputed domain name in connection with a website set up to display sponsored links, Respondent is likely trying to divert traffic intended for Complainant's website to its own website for the purpose of earning revenue from Internet users searching for Complainant's website.

Furthermore, Complainant declares, Respondent's registration of the disputed domain name clearly prevents Complainant from reflecting its trademarks in a corresponding domain name and Respondent has engaged in a pattern of such conduct, within the meaning of paragraph 4(b)(ii) of the Policy. Complainant also contends that the registration of the disputed domain name disrupts and adversely affects Complainant's business.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the BAYER trademark. As noted by Complainant, the disputed domain name incorporates the BAYER mark in full and the addition of the term “energy” does not preclude a determination of confusing similarity. The BAYER mark is clearly recognizable within the domain name.

The Panel further finds that Complainant, through its ownership of trademark registrations for the BAYER mark, as well as its longstanding use thereof, has rights in the mark.

Therefore, Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Panel concludes that Complainant has sustained its burden of establishing that Respondent has no rights or legitimate interests in the disputed domain name. The evidence indicates that the disputed domain name resolves to a parking website featuring sponsored links from which Respondent, presumably, derives revenue. Such “use” may not be considered *bona fide* use under paragraph 4(c)(i) of the Policy.

There also is no evidence that Respondent is commonly known by the disputed domain name or is making a legitimate noncommercial or fair use of the disputed domain name.

Therefore, Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Panel holds that the disputed domain name was registered and is being used in bad faith. Given the widespread fame and use of the BAYER mark, as shown by Complainant, it is inconceivable that Respondent was not aware of the BAYER mark at the time of registration of the disputed domain name.

Under the facts of this case, the fact that the disputed domain name resolves to a website featuring advertising links to third party websites also supports a finding of bad faith. See *Bayer AG v. Withheld for Privacy Purposes Privacy Service Provided by Withheld for Privacy ehf / Mukib Mukib*, WIPO Case No. [DCO2022-0011](#). See, also, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 2.9. (“panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users.”)

The evidence also indicates that Respondent has been involved in more than 300 proceedings under the UDRP, almost all of which were decided in favor of the complainant. In view thereof, the Panel concludes that the provisions of paragraph 4(b)(ii) of the Policy have been satisfied.

Therefore, Complainant has satisfied the third element in paragraph 4(a) 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 <bayerenergy.com> be transferred to Complainant.

/Jeffrey M. Samuels/

Jeffrey M. Samuels

Sole Panelist

Date: August 1, 2023