

## **ADMINISTRATIVE PANEL DECISION**

Bayer AG v. Privacy Service Provided by Withheld for Privacy ehf /  
Andrew Evera  
Case No. D2022-0544

### **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 / Andrew Evera, Canada.

### **2. The Domain Name and Registrar**

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 16, 2022. On February 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 17, 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 February 18, 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 February 21, 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 February 22, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 17, 2022.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on March 29, 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 a company operating in the fields of healthcare, nutrition, and plant protection. Headquartered in Leverkusen, Germany, the Complainant is listed on all German stock exchanges and is included in the DAX40, consisting of the major German companies trading on the Frankfurt stock exchange.

The use of the trademark BAYER began in 1863, when Friedrich Bayer established the company in Germany. In 1881, the name was transferred to a stock corporation. The corporation began marketing pharmaceutical products in 1888 under the BAYER trademark and continues to do so today.

The Complainant is the owner of about 700 trademark registrations and pending applications of the word mark BAYER alone, including International trademark registration No. 1462909, registered on November 28, 2018.

The Complainant has over 250 affiliates and more than 115,000 employees worldwide, manufacturing and selling *inter alia* human pharmaceuticals and medical care products, diagnostic products, and agricultural chemicals.

The Respondent registered the disputed domain name on October 25, 2021, which is currently inactive.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant asserts that the disputed domain name is confusingly similar to the Complainant's well-known trademark BAYER. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant argues that the Respondent has registered and is using the disputed domain name in bad faith.

In addition, the Complainant states that the Respondent is deliberately targeting the Complainant and has already been found to act in bad faith. See *Bayer AG v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Andrew Evera*, WIPO Case No. [D2021-4011](#).

The Complainant requests the transfer of the disputed domain name.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

A Panel shall 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 directs that a complainant must prove each of the following:

- (i) that the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) that the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

#### **A. Identical or Confusingly Similar**

The disputed domain name consists of the term “agro” and the Complainant’s famous BAYER trademark followed by a dash and the letters “pl”. The letters “pl” is the country code for Poland.

The gTLD “.careers” can be disregarded under the first element test.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark.

Therefore, the Panel finds that the Complainant has satisfied the first requirement of paragraph 4(a) of the Policy.

#### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the disputed domain name:

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

There is no evidence of the existence of any of those rights or legitimate interests. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the trademarks. The Complainant has prior rights in the trademarks which precede the Respondent’s registration of the disputed domain name by more than a century.

The Complainant has therefore established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby shifted the burden of production to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trademark rights in respect of the disputed domain name or that the disputed domain name is used in connection with a *bona fide* offering of goods or services. In fact the website at the disputed domain name is not in use.

Therefore, the Panel finds that the Complainant has satisfied the second requirement of paragraph 4(a) of the Policy.

#### **C. Registered and Used in Bad Faith**

The Complainant must prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

The Complainant's allegations with regard to the Respondent's registration and use of the disputed domain name in bad faith has been considered by the Panel. These allegations have not been contested by the Respondent because of its default.

In the instant case, the Panel considers that the Respondent had knowledge of the Complainant's trademark when registering the disputed domain name. The disputed domain name is a combination of the Complainant's trademark BAYER, the term "agro" related to the Complainant's services, and the abbreviation "pl" referring to Poland.

Furthermore, the Panel notes that the Respondent registered on October 19, 2021, (six days before registering the current disputed domain name) another domain name <bayer-pl.careers>. The domain name was subject to a UDRP complaint (see *Bayer AG v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Andrew Evera*, WIPO Case No. [D2021-4011](#)). In that case the panel held that the domain name was registered and used in bad faith by the respondent. In that case also the panel held that the respondent appears to have used the disputed domain name in connection with a fraudulent email scheme.

Based on this it is clear that the Respondent had the Complainant in mind when it registered the disputed domain name.

The Panel finds that passive holding may be evidence of bad faith use. See section 3.3 of the [WIPO Overview 3.0](#).

Furthermore, the failure of the Respondent to answer the Complainant's Complaint and take any part in these proceedings also suggests in combination with other factors bad faith on the part of the Respondent.

Therefore, taking all the circumstances into account and for all the above reasons, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith.

## 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.careers> be transferred to the Complainant.

*/Pablo A. Palazzi/*  
**Pablo A. Palazzi**  
Sole Panelist  
Date: April 6, 2022