

## **ADMINISTRATIVE PANEL DECISION**

Bayer AG v. Andrew Evera  
Case No. D2022-4008

### **1. The Parties**

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

The Respondent is Andrew Evera, Canada.

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

The disputed domain name <bayer-cz.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2022. On October 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 26, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 27, 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 October 27, 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 October 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 18, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on November 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 global enterprise with core competencies in the life science fields of health care and agriculture. The Complainant is represented around the world and also in the Czech Republic (Annexes 4 and 5 to the Complaint).

The Complainant owns numerous trademark registrations for the mark BAYER, *inter alia*:

- International Registration No 1462909, registered November 28, 2018, EM basic registration, designated for Albania, Armenia, Australia, Azerbaijan, Bosnia and Herzegovina, Bahrain, Belarus, Switzerland, China, Colombia, Cuba, Algeria, Egypt, UK, Georgia, Israel, India, Iran (Islamic Republic of), Iceland, Japan, Kyrgyzstan, Cambodia, Korea (Democratic People's Republic of), Korea (Republic of), Kazakhstan, Monaco, Moldova (Republic of), Montenegro, Macedonia (the former Yugoslav Republic of), Mexico, Norway, New Zealand, African Intellectual Property Organization, Oman, Philippines, Serbia, Russian Federation, Syrian Arab Republic, Thailand, Tajikistan, Turkmenistan, Tunisia, and Türkiye, in the classes 1, 3, 5, 9, 10, 31, 35, 41, 42, and 44;
- International Registration No 1476082, registered December 10, 2018, EM basic registration, designated for Australia, Switzerland, China, Colombia, Japan, Kenya, Morocco, Mexico, New Zealand, Russian Federation, Singapore, Türkiye, Ukraine, Uzbekistan, Viet Nam, and Zimbabwe, in the classes 7, 8, 11, 16, 20, 24, 25, 28, 30, 32, 37, 38, 39, 40, 43, and 45 (Annex 7 to the Complaint).

The Respondent registered the disputed domain name on September 6, 2022 (Annex 1 to the Complaint).

The disputed domain name resolved to a parking website (Annex 10 to the Complaint). Furthermore, the disputed domain name was used as email address "[...].@bayer-cz.com" to issue fake job offers in the Complainant's name (Annex 11 to the Complaint).

#### 5. Parties' Contentions

##### A. Complainant

The Complainant is a global enterprise with core competencies in the fields of healthcare, nutrition and plant protection; its global headquarter is in the city of Leverkusen, Germany.

The company name BAYER dates back to 1863, when the firm of "Friedrich Bayer & Co." was established in the town of Elberfeld, now part of the city of Wuppertal in Germany.

The Complainant is represented by over 374 consolidated companies in 83 countries and has more than 99,000 employees worldwide. The Complainant, 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.

In the Czech Republic, the Complainant's products are offered since 1884 and an independent representative office was established 1990 under the name BAYER s. r. o.

The Complainant is the owner of about 700 registrations and pending applications of the word mark BAYER alone, including the international trademarks No 1462909 and No 1476082 for BAYER registered since November 28, 2018 and December 10, 2018, respectively.

Furthermore, the Complainant has a strong presence on the Internet. The Complainant and its subsidiaries own hundreds of domain name registrations containing the BAYER Mark, including <bayer.com>, <bayer.cz>, <bayer.us>, or <bayer.com.au>.

The disputed domain name fully incorporates the well-known BAYER mark and is confusingly similar to it.

Moreover, the Respondent has no rights or legitimate interests in respect of the disputed domain name since the 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 marks. Moreover, the Respondent do not use the disputed domain name in connection with a *bona fide* offering of goods or services and the Respondent does not make a legitimate noncommercial or fair use of the disputed domain name or is commonly known by the disputed domain name or the name “bayer-cz”.

Finally, the disputed domain name was registered and is being used in bad faith:

Based on the Complainant’s high profile worldwide and the fact that the Respondent deliberately targets the Complainant, 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 mark.

By using the disputed domain name in connection with a website which is set up to display sponsored listings, the Respondent is, in all likelihood, trying to divert traffic intended for the Complainant’s website to its own for the purpose of earning revenues from Internet users searching for the Complainant’s website. Furthermore, the disputed domain name and the name of the Complainant’s subsidiary in the Czech Republic, Bayer s.r.o., being fraudulently used as an email address “[...]@bayer-cz.com” by the Respondent to issue fake job offers in the Complainant’s name in an attempt to extract money from the job candidates.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests with respect to 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**

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark BAYER.

The disputed domain name <bayer-cz.com> is confusingly similar to the Complainant’s registered trademark BAYER since it entirely contains the distinctive BAYER mark and only adds the geographic abbreviation for the Czech Republic “cz” together with a hyphen.

It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third

Edition "[WIPO Overview 3.0](#)").

Finally, it has also long been held that generic Top-Level-Domains ("gTLDs") are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

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 section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's distinctive mark in its entirety together with the geographical abbreviation for the Czech Republic "cz", cannot be considered fair as these falsely suggest an affiliation with the Complainant (at least in the Czech Republic) that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

Noting the above and all of the evidence put forward by the Complainant in the Complaint, as well as the Complainant's contentions that the Respondent has no rights or legitimate interests in the disputed domain names, that the Respondent has no connection or affiliation with the Complainant, and the Respondent has not received any license or consent, express or implied, to use the Complainant's trademark BAYER in a domain name or in any other manner as well as the fact that the Respondent has not rebutted these allegations, it is undeniable for this Panel that the conditions set out in paragraph 4(a)(ii) of the Policy have been met by the Complainant.

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

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the well-known and highly distinctive registered trademark BAYER, which is registered and used in many jurisdictions, long before the registration of the disputed domain name. Moreover, the Complainant registered and is using various domain names containing the trademark BAYER e.g. <bayer.com>, <bayer.us>, and <bayer.cz> among others. The Complainant has a strong Internet presence under its mark BAYER.

It is inconceivable for this Panel that the Respondent registered and used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's trademark and company name BAYER entirely together with the geographic abbreviation for the Czech Republic "cz".

In fact, the use of the term "cz" in connection with the mark BAYER rather strengthen the impression that the disputed domain name is in some way connected to the Complainant or the Complainant's services, and at

least the Respondent may be seen to free ride on the reputation of the Complainant and its name and trademark BAYER.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The disputed domain name is also being used in bad faith since it resolved to a parking page. Moreover, panels have held that the use of a domain name for purposes other than to host a website may also constitute bad faith use; such purpose include sending deceptive emails (see section 3.4 of the [WIPO Overview 3.0](#)). In the present case the disputed domain name was used as email address to issue fake job offers in the Complainant's name.

Moreover, Panels have consistently found that the mere registration of a domain name incorporating a distinctive mark in its entirety plus a descriptive term (as in the present case) by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

This Panel also concludes bad faith use, putting emphasis on the following:

- the Complainant's trademark BAYER is distinctive and well known in the healthcare, nutrition, and plant protection sector;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name incorporates the Complainant's trademark in its entirety, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site);
- the disputed domain name moreover contains the suffix "cz" which refers to the business of the Complainant in the Czech Republic; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) 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 <bayer-cz.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: December 12, 2022