

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Mary Aurelien

Case No. D2022-4077

1. The Parties

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

The Respondent is Mary Aurelien, Poland.

2. The Domain Name and Registrar

The disputed domain name <ca-bayer.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 28, 2022. On October 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 29, 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 November 7, 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 November 9, 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 November 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 2, 2022.

The Center appointed Kathryn Lee as the sole panelist in this matter on January 6, 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 German multinational pharmaceutical and biotechnology company. Its use of the name BAYER dates back to 1863, and it has sold products under the BAYER trademark since 1888. The Complainant has more than 99,000 employees and offices in over 83 countries. The Complainant's stock is listed in nearly all the major share indices, including in the DAX 40, a Blue-Chip stock market index consisting of the 40 major Germany companies trading on the Frankfurt Stock Exchange. The Complainant is the owner of around 700 trademark applications and registrations for the word mark BAYER worldwide including International trademark registration numbers 1462909 and 1476082, registered on November 28, 2018 and December 10, 2018.

The Respondent appears to be an individual with an address in Poland.

The disputed domain name was registered on July 15, 2022, and is not connected to any website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the BAYER trademark in which the Complainant has rights. The Complainant explains that the disputed domain name incorporates the distinctive BAYER trademark in its entirety, and the additional word "ca" is a two-letter abbreviation for Canada, which does not eliminate the confusing similarity between the Complainant's trademark and the disputed domain name.

The Complainant also contends that the Respondent has no rights or legitimate interests in the disputed domain name and confirms that it has not authorized or licensed rights to the Respondent in any respect. The Complainant further contends that there is no evidence of the 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.

Finally, the Complainant contends that the disputed domain name was registered and is used in bad faith. The Complainant explains that given the worldwide reputation of the BAYER mark, it is inconceivable for the Respondent to have registered the disputed domain name without being aware of the Complainant and its mark. Further, the Complainant asserts that even though the disputed domain name is not being actively used, it does not prevent a finding of bad use on the part of the Respondent. The Complainant also contends that the Respondent's registration of the disputed domain name prevents the Complainant from reflecting its trademark in a corresponding domain name and that there does not appear to be any possible or conceivable good faith use of the disputed domain name that would not be illegitimate. Moreover, the Complainant contends that it was contacted by a third party regarding the legitimacy of an email address associated with the disputed domain name, which suggests that the disputed domain name is involved in employment fraud, and accordingly further supports a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

The Complainant has demonstrated with supporting evidence that it has rights to the trademark BAYER. As for the disputed domain name, it contains the BAYER mark in its entirety along with a hyphen and the term "ca". According to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, a domain name is considered confusingly similar to a trademark if it

“incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name”. In this regard, the BAYER mark is incorporated in the disputed domain name in its entirety and is readily recognizable within the disputed domain name. The additional term “ca-” does not prevent a finding of confusing similarity (see [WIPO Overview 3.0](#), section 1.8).

For the reasons mentioned above, the Panel finds that the first element has been established.

B. Rights or Legitimate Interests

On the basis of the present record, the Panel finds that the Complainant has made the required allegations to support a *prima facie* case showing that the Respondent has no rights or legitimate interests in the disputed domain name. Once such a *prima facie* case has been established, the burden of production shifts to the Respondent to demonstrate its rights or legitimate interests in the disputed domain name, with the burden of proof always remaining with the Complainant. However, the Respondent in this case has chosen to file no Response to these assertions by the Complainant, and there is no evidence or allegation in the record that would warrant a finding in favor of the Respondent on this point.

Besides, a respondent’s use of a domain name is not considered “fair” if it falsely suggests affiliation with the trademark owner. See [WIPO Overview 3.0](#), section 2.5.1. Here, the dominant element of the disputed domain name corresponds exactly to the Complainant’s trademark, and the additional term “ca”, which is often used as the abbreviation for “Canada”, suggests that the disputed domain name belongs to the Complainant’s Canada subsidiary, and carries a risk of implied affiliation.

For the reasons provided above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, and that the second element has been established.

C. Registered and Used in Bad Faith

The Panel finds that there is strong and clear evidence to find bad faith in this case.

The registration of the disputed domain name, which is confusingly similar to the Complainant’s famous BAYER mark, by the Respondent, who is unaffiliated with the Complainant, creates a presumption of bad faith. Further, based on the fame of the Complainant and the Complainant’s marks, the Respondent probably knew of the Complainant and its marks at the time of the registration of the disputed domain name. Even if the Respondent did not, a simple Google search would have shown numerous results of the Complainant. The disputed domain name does not display any content, but from the inception of the UDRP, UDRP panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. See [WIPO Overview 3.0](#), section 3.3. Considering the distinctiveness of the BAYER mark, the Respondent’s failure to submit a response or provide any evidence of actual or contemplated good-faith use, and the implausibility of any good faith use to which the confusingly similar disputed domain name could be put, the Panel finds that the Respondent’s non-use of the disputed domain name does not prevent a finding of bad faith. For completeness, the Panel notes the Complainant contends that the disputed domain name has been used in connection to a fraudulent employment scheme, which would be clear evidence of bad faith, but has provided no direct evidence of such fraud. However, the Panel need not make a determination on this contention considering the above factors pointing to bad faith.

For the reasons given above, the Panel finds that the third element has been established.

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 <ca-bayer.com> be transferred to the Complainant.

/Kathryn Lee/

Kathryn Lee

Sole Panelist

Date: January 20, 2023