

## **ADMINISTRATIVE PANEL DECISION**

**Bayer AG v. Withheld for Privacy Purposes Privacy service provided by  
Withheld for Privacy ehf / Mukib Mukib  
Case No. DCO2022-0011**

### **1. The Parties**

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

Respondent is Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf, Iceland / Mukib, Chile.

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

The disputed domain name <bayer-nz.co> 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 7, 2022. On February 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 8, 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 Complainant on February 9, 2022, 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 February 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 Respondent of the Complaint, and the proceedings commenced on February 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on March 4, 2022.

The Center appointed Leon Trakman as the sole panelist in this matter on March 9, 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**

Complainant is an international enterprise that originated in 1863 and with its current headquarters in Leverkusen, Germany. Complainant's business deals primarily with healthcare, nutrition, and plant protection, and is outlined on its corporate website at "www.bayer.com". It owns approximately 700 registrations under the trademark BAYER. These include International registration numbers 1462909 (registered on November 28, 2018) and 1476082 (registered on December 10, 2018), referred to hereafter as the "Trademark". Complainant and its subsidiaries also own multiple domain names, such as <bayer.com>, <bayer.co.nz>, <bayer.com.au>, <bayer.co>, or <bayer.us>.

The disputed domain name was registered on January 3, 2022, and resolves to a parked webpage displaying pay-per-click links. Complainant has provided evidence that the disputed domain name has been used in connection to a fraudulent email scheme.

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

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

Complainant contends that:

1. the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights, contrary to paragraph 4(a)(i) of the Policy;
2. Respondent has no rights or legitimate interests in respect of the disputed domain name, contrary to paragraph 4(a)(ii) of the Policy; and
3. the disputed domain name was registered and is being used in bad faith, contrary to paragraph 4(a)(iii) of the Policy.

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

Respondent did not reply to Complainant's contentions.

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

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

The disputed domain name is confusingly similar to Complainant's well-known BAYER Trademark. This decision is based on the following factors.

First, the specific Top-Level Domain of the disputed domain name is generally not determinative in establishing whether the disputed domain name is confusingly similar to Complainant's Trademark. See, e.g., *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#); see also, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.

Second, the addition of the term "nz" and a hyphen does not prevent a finding of confusing similarity to Complainant's Trademark. See, e.g., [WIPO Overview 3.0](#), section 1.8 ("Where 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.”) See also, *L’Oréal SA v. Aaliyah Bull, et al.*, WIPO Case No. [D2013-1416](#).

Third, Complainant’s Trademark is clearly recognizable within the disputed domain name.

The Panel concludes that the disputed domain name is confusingly similar to Complainant’s Trademark, as is required by paragraph 4(a)(i) of the Policy.

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

The Panel determines that Respondent has no rights or legitimate interests in the disputed domain name, for the following reasons.

First, while Complainant has the burden of proving that Respondent does not have rights or legitimate interests in the disputed domain name, it is sufficient for Complainant to provide *prima facie* evidence to shift the burden of production onto Respondent. See, e.g., [WIPO Overview 3.0](#), section 2.1.

Second, Complainant has demonstrated such a *prima facie* case to the satisfaction of this Panel. Respondent has not provided any response or evidence to rebut this *prima facie* case.

Third, there is no evidence that Respondent is commonly known by the disputed domain name or “bayer-nz”. It is reasonable to conclude that a third party who uses the name “bayer” is aware of the association of that name with Complainant’s Trademark. It is also reasonable to determine that, in so using the name, Respondent is acting with the express or implied authority of Complainant, such as an agent of Complainant, or of a subsidiary. Complainant has not so authorized Respondent. Complainant has not licensed or otherwise permitted Respondent to use any of its Trademarks and has not otherwise expressly or impliedly authorized Respondent to apply for or use any domain name incorporating the BAYER Trademark.

Fourth, Complainant has provided evidence that the disputed domain name was used in furtherance of a fraudulent email scheme whereby Respondent sent fraudulent emails, falsely claiming to be a subsidiary of Complainant to Internet users, appearing to offer employment and seeking sensitive personal information under false pretenses. Such use for illegal activity can never confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.

Fifth, further affirming this determination is the absence of evidence of Respondent’s use, or preparation to use the disputed domain name or a name corresponding to it in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. Respondent’s use of the disputed domain name as a parking website that provides marketing links for third parties’ websites, at least some of which compete with Complainant’s, or to induce third parties to make an undue payment or provide sensitive personal details to the Respondent does not constitute a *bona fide* offering under paragraph 4(c)(i).

Sixth, there is no reasonable evidence that Respondent is making a legitimate noncommercial or fair use of the disputed domain name, but rather the evidence points to the contrary, as discussed above.

In support of the above findings, see *GGG Filmproduktion und Vertrieb e.K. v. E4 Group and Frank Jensen*, WIPO Case No. [D2006-1177](#) (“The Complainant has not in any way granted Respondent rights to use its mark, and is in no way affiliated with the Respondent. The Respondent has not asserted any rights or legitimate interests in the domain name. Considering this background, the Panel concludes that the Complainant has made out a *prima facie* showing that Respondent lacks rights or legitimate interests in the contested domain name.”); see also, *F. Hoffmann-La Roche AG v. Fred*, WIPO Case No. [D2006-0246](#); *L’Association des centres distributeurs E. Leclerc - ACD LEC v. CC*, WIPO Case No. [D2005-1071](#); *Wal-Mart Stores Inc. v. Frank Warmath*, WIPO Case No. [DTV2008-0013](#); *Janus Interantional Holding Co. v. Scott Rademacher*, WIPO Case No. [D2002-0201](#).

Accordingly, the Panel determines that that Respondent has no rights or legitimate interests in the disputed domain name as is required by paragraph 4(a)(ii) of the Policy.

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

The Panel determines that Respondent has registered the disputed domain name in bad faith.

First, it is reasonable to conclude that Respondent registered the disputed domain name with reasonable awareness of Complainant and its rights and interests in the Trademark BAYER.

Second, the name “bayer” is unusual, other than in its long-standing use by Complainant and international recognition of that use.

Third, affirming this conclusion is the fact that Complainant has used (long before the registration of the disputed domain name) and continues to use its Trademark globally, as is elaborated upon below.

Fourth, given these factors and the confusing similarity between Complainant’s Trademark and the disputed domain name, it is likely that Respondent’s registration of the disputed domain name was to falsely suggest an affiliation with the Complainant or otherwise take unfair advantage of the Trademark.

Fifth, affirming both bad faith registration and use is evidence that Respondent sent fraudulent emails to third parties in which it claimed to be a subsidiary of Complainant, as is elaborated upon below.

These facts reasonably establish that Respondent registered the disputed domain name in bad faith.

The Panel determines that Respondent is using the disputed domain name in bad faith.

The Panel so determines that Respondent is using the disputed domain name in bad faith for the following reasons.

First, the disputed domain name is most likely being used in bad faith to divert traffic, otherwise intended to access Complainant’s website, to Respondent’s website.

Second, Respondent is likely to know that its bad faith diversion of traffic away from Complainant’s websites is likely to cause or threaten to cause some disruption to Complainant’s business, such as in reducing the number of visitors to its website and undermining its profits. See, e.g., *BR IP Holder LLC v. Registrant [1966810]: Tech Administrator*, WIPO Case No. [D2009-1358](#) (“The Panel also accepts the Complainant’s contentions, absent any response or reply from the Respondent, that the Respondent’s use of its website with the disputed domain name was also, in part, undertaken for the purpose of disrupting the Complainant’s business. Such actions are capable of reducing the number of visitors to the Complainant’s website and may adversely affect the Complainant’s business”); *Estée Lauder Inc. v. estelauder.com, estlauder.net and Jeff Hanna*, WIPO Case No. [D2000-0869](#).

Third, affirming Respondent’s bad faith use is the fact that its website features advertising links to third party websites. The reasonable assumption is that Respondent’s use of such advertising is intended to secure a profit, whether directly or otherwise. That profit is most likely to devolve from Respondent earning click-through revenue by diverting Internet traffic away from Complainant to such third parties by unfairly capitalizing on the reputation and goodwill of the Trademark.

Fourth, further affirming bad faith use, Respondent has sent emails to third parties in which it has claimed, directly, or created the reasonable impression, that it is an agent or subsidiary of Complainant. It is reasonable to conclude on the facts that such transmission of email constitutes a fraudulent misrepresentation intended to mislead and deceive the recipients of Respondent’s emails and having the effect of so misleading and deceiving them.

Fifth, there is no countervailing evidence reasonably contradicting the evidence of Respondent's use of the disputed domain name in bad faith. In particular, there is no evidence that Respondent has any direct or indirect connection to, affiliation, or legal association with Complainant, its agents, or other representatives that would reasonably rebut such bad faith use. See, e.g., *America Online Inc. v. Chinese ICQ Network*, WIPO Case No. [D2000-0808](#) (“[the] very use [of the confusingly similar disputed domain name] by someone with no connection with the product suggests opportunistic bad faith.”). See also, *General Motors LLC v. desgate*, WIPO Case No. [D2012-0451](#); *RapidShare AG, Christian Schmid v. Ali Private Company, Ali Kamran*, WIPO Case No. [D2010-0610](#).

In finding bad faith use of the disputed domain name, the Panel quotes, in support, the decision in *Bayer AG v. Volker Kammel, Whois Agent / Whois Privacy Protection Service, Inc.*, WIPO Case No. [D2015-0540](#).

“The circumstances of this case, in particular the transmission of fraudulent emails using the disputed domain name <bayerhealthcare-ag.com> and the registration of the further disputed domain name <healthcarebayer.com> after the <bayerhealthcare-ag.com> disputed domain name was blocked show bad faith at the time of the Respondent's registration and use of the disputed domain names by attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location.” See also, *Bayer AG v. Withheld for Privacy Purposes Privacy service provided by Withheld for Privacy ehf / Todd Peter*, WIPO Case No. [D2021-2726](#).

The Panel determines that the disputed domain name was registered and used in bad faith as is required by 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-nz.co>, be transferred to Complainant.

*/Leon Trakman/*

**Leon Trakman**

Sole Panelist

Date: March 23, 2022