

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Mukib Mukib and johnson mitchell
Case No. DCO2022-0092

1. The Parties

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

The Respondents are Mukib Mukib, Chile and johnson mitchell, India.

2. The Domain Names and Registrar

The disputed domain names <bayer-career-nz.co> and <bayernz.co> are registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 2, 2022. On November 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 3, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names 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 4, 2022, providing the registrant and contact information for multiple underlying registrants disclosed by the Registrars, and inviting the Complainant to either amend the Complaint adding the Registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all named Respondents are, in fact, the same entity and/or that all domain names are under common control; and/or, to file a separate complaint for any domain name for which it is not possible to demonstrate that all named Respondents are in fact the same entity and/or that all domain names are under common control and indicate which domain name will no longer be included in the current Complaint. The Complainant filed an amended Complaint on November 9, 2022, including arguments for consolidation.

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 Respondents 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 Respondents did not submit any response. Accordingly, the Center notified the Respondents' default on December 2, 2022.

The Center appointed Peter Burgstaller as the sole panelist in this matter on December 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

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 (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, European Union basic registration, designating, among others, India, Iceland, Switzerland, the United Kingdom, in the classes 1, 3, 5, 9, 10, 31, 35, 41, 42, and 44;
- International Registration No. 1476082, registered December 10, 2018, European Union basic registration, designating, among others, Australia, China, Colombia, Japan, 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 6 to the Complaint).

The Complainant addresses its main website under the domain name <bayer.com> but also owns various other domain names containing the mark BAYER (Annexes 4 and 7 to the Complaint).

The Respondents registered the disputed domain name <bayer-career-nz.co> on February 21, 2022, and the disputed domain name <bayernz.co> on July 7, 2022 (Annex 1 to the Complaint).

When the Complaint was filed, the disputed domain name <bayer-career-nz.co> resolved to a website displaying an "Error 1000" message and the disputed domain name <bayernz.co> resolved a website with no substantive content. The disputed domain names are currently not actively used.

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.

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.co.nz>, <bayer.us>, and <bayer.com.au>.

The disputed domain names fully incorporate the well-known BAYER mark and are confusingly similar to it.

Moreover, the Respondents have no rights or legitimate interests in respect of the disputed domain names since the Complainant has not licensed or otherwise permitted the Respondents to use any of its trademarks and has not permitted the Respondents to apply for or use any domain name incorporating the BAYER mark. Moreover, the Respondents do not use the disputed domain names in connection with a *bona fide* offering of goods or services and the Respondents do not make a legitimate noncommercial or fair use of the disputed domain names or are not commonly known by the disputed domain names.

The disputed domain names were registered and are being used in bad faith. Based on the Complainant's high profile worldwide and the fact that the Respondents deliberately target the Complainant, it is inconceivable that the Respondents registered the disputed domain names unaware of the Complainant and its rights in its highly distinctive and well-known BAYER mark.

The Respondents' registration of the disputed domain names clearly prevents the Complainant from reflecting its trademarks in a corresponding domain name and the Respondents have engaged in a pattern of such conduct. In addition, to the Complainant's best information and belief, the disputed domain names are part of a series of frauds, that the Complainant is currently facing, and are therefore used in bad faith.

Finally, the Complainant requests a consolidation of the Respondents regarding the disputed domain names since there is evidence that in fact, the disputed domain names are subject to common control, so that the consolidation of the Respondents would be procedurally efficient, fair, and appropriate.

B. Respondents

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

6. Discussion and Findings

6.1. Preliminary Procedural Issue – Consolidation of Respondents

The Complainant has requested consolidation of multiple respondents and stated that the disputed domain names belong in fact to the same person or organization. No objection to this request was made by the Respondents.

Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Moreover, procedural efficiency would also underpin panel consideration of such a consolidation scenario (see section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#))).

When determining whether a consolidation is appropriate, panels consider a range of factors, e.g.:

- the registrants' identity(ies) including pseudonyms;
- the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities;
- relevant IP addresses, name servers, or webhost(s);
- the nature of the marks at issue (e.g., where a registrant targets a specific sector);
- any naming patterns in the disputed domain names (e.g., suffix/prefix); or
- other arguments made by the complainant and/or disclosures by the respondent(s).

If some of these factors are present in some combination, a consolidation of the respondents is appropriate (see section 4.11.2 of the [WIPO Overview 3.0](#)).

Following the Complainant's contentions in the present case, which were left unrebutted by the Respondents, the Panel is convinced that the arguments and evidence provided by the Complainant demonstrates that the disputed domain names are under common control.

In this respect, the Panel notes that the disputed domain names follow the similar naming pattern, both adding the geographic abbreviation "nz" for New Zealand, were both registered with the same Registrar within a relatively short period of time, using the same privacy service, and the Registrar's Whois information seems to be wrong and has an astonishing coincidence for both of the disputed domain names, that after the respective United States of America ("US") state the letter "P" is added, which does not occur in the official designation of the two states, and these US states are combined with countries outside the US, namely Chile and India.

Taking together these facts, the Panel finds that there is evidence that the disputed domain names are subject to common control, and that it would be procedurally efficient, fair, and equitable to all Parties to accept the Complainant's consolidation request. The Panel further notes that the Respondents did not react in any way – the Respondents neither rejected the consolidation request nor filed a Response. The Panel therefore accepts the Complainant's consolidation request. Hence, the Panel will refer to the Respondents in the singular, *i.e.*, "the Respondent".

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 in 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 names are confusingly similar to the Complainant's registered trademark BAYER since they entirely contain the distinctive BAYER mark and only add:

- with regard to the disputed domain name <bayer-career-nz.co>, the term "career" together with "nz" (the geographic abbreviation for New Zealand) separated by hyphens; and
- with regard to the disputed domain name <bayernz.co>, the term "nz" (the geographic abbreviation for New Zealand).

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 3.0](#)).

Finally, it has also long been held that generic or country-code Top-Level-Domains are generally disregarded

when evaluating the confusing similarity between a disputed domain name and a trademark.

The Panel therefore finds that the Complainant has established the first element 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 names, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain names, comprising the Complainant’s distinctive mark in its entirety together with the geographical abbreviation “nz” for New Zealand (and the descriptive term “career” in one of the disputed domain names), cannot be considered fair use as it falsely suggests an affiliation with the Complainant that does not exist (see section 2.5.1 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 names were registered by the Respondent in bad faith, and
- the disputed domain names are being used by the Respondent in bad faith.

(a) 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 names. Moreover, the Complainant registered and is using various domain names containing the trademark BAYER, e.g., <bayer.com>, <bayer.us>, <bayer.co>, and <bayer.co.nz> among others and has a strong Internet presence under its mark BAYER.

It is inconceivable for this Panel that the Respondent has registered and used the disputed domain names 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 names incorporate the Complainant’s trademark and company name BAYER entirely together with the geographic abbreviation “nz” for New Zealand.

In fact, the use of the term “nz” in connection with the mark BAYER rather strengthen the impression that the disputed domain names are in some way connected to the Complainant or the Complainant’s services especially for the territory of New Zealand, 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 names were registered in bad faith by the Respondent.

(b) Although there is no evidence that the disputed domain names were being actively used (at the time of filing of the Complaint, the disputed domain name <bayer-career-nz.co> resolved to a website displaying an “Error 1000” message and the disputed domain name <bayernz.co> resolved a website with no substantive content, and now both disputed domain name resolve to inactive websites), previous UDRP panels have found that bad faith use under paragraph 4(a)(iii) of the Policy does not necessarily require a positive act on the part of the respondent – the non-use of a domain name does not prevent a finding of bad faith under paragraph 4(a)(iii) of the Policy (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

The Panel also concludes that the present passive holding of the disputed domain names, constitutes a 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 names;
- the disputed domain names incorporate the Complainant’s trademark in its entirety, and are 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 names moreover contain the suffix “nz” which may mislead web users into believing that the disputed domain names are used for the business of the Complainant in New Zealand; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain names.

Taking all these facts and evidence into consideration, this Panel finds that the disputed domain names have 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 names, <bayer-career-nz.co> and <bayernz.co>, be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: December 23, 2022