

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Privacy Service Provided by Withheld for Privacy ehf /

Akbar Ali Khan

Case No. D2022-0804

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 / Akbar Ali Khan, Germany.

2. The Domain Name and Registrar

The disputed domain name <bayerfynancial.net> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2022. On March 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 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 the Complainant on March 9, 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 March 14, 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 March 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 5, 2022.

The Center appointed Theda König Horowicz as the sole panelist in this matter on April 13, 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 German company which is active worldwide in the field of healthcare, nutrition and plant protection. It was founded in 1863 and began manufacturing and commercializing pharmaceutical products in 1888, already under the name BAYER. It has affiliated companies and employees worldwide. The Complainant is regularly ranked as one of the world's leading companies.

The Complainant is the owner of a large number of trademark registrations for BAYER as a word mark alone, including the international trademark registrations No. 1462909 of November 28, 2018 and 1476082 of December 10, 2018. Considering its exclusive and extensive use, the Complainant's BAYER Trademark acquired a significant goodwill and is widely known.

The Complainant has an Internet presence under the domain name <bayer.com> and it is also the owner of numerous other domain names comprising its business name and trademark.

The disputed domain name was registered on October 5, 2021. The Respondent's postal address as mentioned to the Registrar corresponds to the address of the Complainant's headquarters. Furthermore, the disputed domain name is used with a website which refers to the Complainant and uses pictures of the Complainant's official website. The Respondent also invites Internet users to open an account on the said website.

5. Parties' Contentions

A. Complainant

The Complainant raises that the disputed domain name fully incorporates the well-known BAYER Trademark and is confusingly similar to such mark. The specific Top Level Domain associated with the disputed domain name is not relevant. Furthermore, the BAYER Trademark is entirely recognizable within the disputed domain name. The additional word "fynancial", an obvious spelling mistake of "financial" is generic and does not eliminate the confusing similarity.

The Complainant underlines that the BAYER Trademark is well-known and obviously connected with the Complainant and its products. The Complainant has not licensed or otherwise permitted the Respondent to use its trademark and to register the disputed domain name. There is no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. As a matter of fact, the Respondent is using the disputed domain name for a scam website. There is also no evidence which suggests that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or that the Respondent would be commonly known by the disputed domain name. Under the circumstances, the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant states that the Respondent has registered and is using the disputed domain name in bad faith. A domain name containing the well-known BAYER Trademark can only be chosen to create an impression of association with the Complainant which is actually the case since the Respondent linked the disputed domain name to a website which refers to the Complainant's business. In this context, the Complainant alleges that the Respondent has used the disputed domain name to attract Internet users and divert Internet traffic to its scam website for the likely purpose of commercial gain. The Respondent's registration of the disputed domain name also prevents the Complainant from reflecting its trademark in a

corresponding domain name. It is well established that providing a false contact information, as the Respondent did, is a further indication of bad faith. The Respondent's use of the disputed domain name is qualified to disrupt the Complainant's business and therefore constitutes bad faith.

B. Respondent

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

6. Discussion and Findings

Under the Policy, in order to prevail, a complainant must prove the following three elements for obtaining the transfer of a domain name:

(i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) that the respondent has no rights or legitimate interests in the disputed domain name; and

(iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant showed to have trademark rights in BAYER through several registrations worldwide.

According to section 1.7, of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

Furthermore, according to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms does not prevent a finding of confusing similarity.

The disputed domain name contains the BAYER trademark in its entirety. The addition in the disputed domain name of the term "fynancial", an obvious misspelling of the term "financial", is not sufficient to prevent a confusing similarity, as the BAYER trademark remains clearly recognizable in the disputed domain name.

Under these circumstances, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's mark.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances that may demonstrate when a respondent has rights or legitimate interests in the use of a domain name. The list includes:

(i) the use of the domain name in connection with a *bona fide* offering of goods or services;

(ii) being commonly known by the domain name; or

(iii) the making of a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers.

Once the Complainant establishes a *prima facie* case against the Respondent under this ground, the burden of production shifts to the Respondent to rebut it. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has made sufficient submissions in order to demonstrate that the Respondent would have no rights or legitimate interests in the disputed domain name.

In particular, the Panel notes that the case file does not show that the Respondent would be known as “bayer” or that a legitimate business would be run by the Respondent under the disputed domain name.

To the contrary, the Complainant has shown that the disputed domain name was used in relation to a website extensively using the BAYER Trademark and images taken from the Complainant’s official website, thus wrongly giving the impression to be associated with the Complainant.

Furthermore, the website associated to the disputed domain name invites its users to open an account on the said website.

Based on the above, the Panel considers that the Complainant has made a *prima facie* case and the burden of production shifts to the Respondent who has chosen not to reply.

As already stated before, nothing is contained in the case file which would show that the disputed domain name has been legitimately used by the Respondent or that the Respondent would have any rights or legitimate interests in the disputed domain name.

Consequently, the Panel finds that the Complainant has established its case under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel notes that the Complainant’s trademark BAYER is a registered trademark which has been widely used by the Complainant for more than a century in relation notably to pharmaceutical products. As evidenced by the Complainant and mentioned in a large number of previous WIPO UDRP decisions, the trademark BAYER has acquired the status of a well-known trademark.

A simple Internet search would have enabled the Respondent to identify that BAYER is a protected brand. The Respondent could thus not be unaware of the Complainant’s trademark when registering the disputed domain name.

Hence, the Panel finds that the Respondent knew or should have known of the Complainant’s trademark and deliberately registered the confusingly similar disputed domain name (see section 3.2.2 of the [WIPO Overview 3.0](#)).

Furthermore, the Complainant has established that the Respondent’s intent in registering the disputed domain name was in fact to profit from or otherwise exploit the Complainant’s trademark because the website which was used in relation to the disputed domain name was set up in a way to create a likelihood of confusion with the Complainant, notably by widely using the BAYER Trademark on the said site which insinuates a connection with the Complainant’s business and brand (see section 3.1.4 of the [WIPO Overview 3.0](#)).

The fact that the said website is also encouraging Internet users to open an account, thus trying to collect sensitive details of Internet users (phishing site) is another indication of bad faith use.

The Panel further notes that the Respondent has (i) hidden its identity by using a privacy service when registering the disputed domain name, (ii) provided a false address to the Registrar as its address actually corresponds to the Complainants' German headquarters and (iii) chosen not to respond, are other indications of bad faith in the present circumstances.

In light of the above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith and that the Complainant has established its case 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 <bayerfynancial.net> be transferred to the Complainant.

/Theda König Horowicz/

Theda König Horowicz

Sole Panelist

Date: May 3, 2022