

ADMINISTRATIVE PANEL DECISION

Bayer AG v. myster shopper
Case No. D2022-4637

1. The Parties

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

Respondent is myster shopper, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <ag-bayerpl.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 December 3, 2022. On December 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 5, 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 Complainant on December 6, 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 December 7, 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 December 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 29, 2022. On December 13, 2022, the Center received communications from a third party, disclosing that they received a Written Notice in relation to these proceedings, but that they’re not connected to the disputed domain name. Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on January 3, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on January 10, 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

Complainant states in its Complaint, and provides evidence in the respective Annexes attached to its Complaint sufficient to support that:

Complainant, a corporation organized under the laws of Germany, is a major and well-known worldwide leader in the manufacturing and marketing of human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals sold since 1888 under the trademark BAYER (the “BAYER Mark”). Comprised of over 374 consolidated companies in 83 countries with more than 99,000 employees worldwide, Complainant is regularly listed among the world’s leading companies in multiple industries and in 2019, ranked 14 among the top 50 global pharma companies by leading brand ranking services.

Complainant also has a strong presence on the Internet, owning along with its subsidiaries hundreds of domain name registrations incorporating the BAYER Mark, including, <bayer.com>, registered since 1996 and used to access its primary official BAYER Mark website, as well as <bayer.co.nz>, <bayer.com.au>, <bayer.co>, <bayer.com.pl>, and <bayer.us> used to promote its goods and services on its official websites accessed through these domains names.

Complainant has used the BAYER Mark for a range of pharmaceutical and medical care products for over 130 years and owns about 700 trademark registrations and pending applications worldwide for the word mark BAYER alone, including international trademarks Nos. 1462909 and 1476082 for BAYER registered since November 28, 2018, and December 10, 2018, respectively, which registrations cover a broad range of goods including chemical and pharmaceutical products as well as scientific and medical services in multiple international classes relevant to this proceeding, each designating many countries including the United Kingdom, where Respondent appears to be located.

Complainant has submitted in its Complaint a list of UDRP panel decisions from 2001 to 2020, finding that Complainant’s BAYER Mark is well known, including *Bayer Aktiengesellschaft v. Yongho Ko*, WIPO Case No. [D2001-0205](#); *Bayer AG v. Wu Zi Jun*, WIPO Case No. [D2018-2676](#); and *Bayer AG v. Whoisprotection.cc / Drago Price, Bayer*, WIPO Case No. [D2020-0051](#).

The disputed domain name was registered on May 23, 2022, and on or about November 6, 2023, resolved to a parked page displaying pay-per-click (“PPC”) advertising in German links to third party advertising, including firms potentially in competition with Complainant.

5. Parties’ Contentions

A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant’s trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

Respondent did not file a formal Response in reply to Complainant’s contentions, but as noted above, a third party sent an informal communication, disclosing that they received a Written Notice in relation to these proceedings, but that they’re not connected to the disputed domain name.

6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall “draw such inferences therefrom as it considers appropriate”.

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that the requirements for each of the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these elements in more detail below.

The standard of proof under the Policy is often expressed as the “balance of the probabilities” or “preponderance of the evidence” standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.2.

A. Procedural Matter: Consideration of Third Party Unsolicited Informal Communication

The Panel has also reviewed the informal communications from a third party sent to the Center on December 13, 2022. On December 13, 2022, the Center received two submissions from an email address entirely different from Respondent’s email address as disclosed by the Registrar for the disputed domain name after the Complaint was filed.

The email disclosed that this third party received a Written Notice in relation to these proceedings, that they do not own and have no knowledge of the disputed domain name, that they have not received any emails in relation to this Complaint, and that their name does not match the Respondent’s name.

The above-mentioned communications with the Center were received after the disputed domain name had been locked by the Registrar and will be treated as coming from a third party and not Respondent. The Panel finds, however, that this correspondence provides unsolicited third party evidence from which the Panel may reasonably infer that Respondent submitted a fraudulent postal address unrelated to the email submitted since the third party claimed no receipt of the Complaint and Notice via email from the Center, which fraudulent registration data may be considered in the determination of bad faith registration under the third element in 6.C below. The Panel also finds these emails do not comprise a formal response from Respondent, but they have been considered nonetheless to determine what impact they may have.

B. Identical or Confusingly Similar

Ownership of a nationally registered trademark constitutes *prima facie* evidence that the complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant claims trademark rights in the BAYER Mark for its pharmaceutical products and agricultural chemical products in its registrations for the BAYER Mark, registered all over the world. Sufficient evidence has been submitted in the form of electronic copies of valid and subsisting trademark registration documents in the name of Complainant. Complainant has demonstrated, therefore, that it has rights in the BAYER Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

With Complainant’s rights in the BAYER Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant’s BAYER Mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”. [WIPO Overview 3.0](#), section 1.7.

Prior UDRP panels have held the fact that a domain name wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other words to such marks. [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").

A side-by-side comparison between the disputed domain name and Complainant's BAYER Mark shows the BAYER Mark is incorporated in its entirety and recognizable as the dominant distinctive feature of the disputed domain name, bookended by "ag-" before and "pl" after the BAYER Mark. The term that precedes the BAYER Mark, "ag" could be read as the business descriptor abbreviation of "Aktiengesellschaft", the German term or entity designation for a public limited company. The term "pl" that follows the BAYER Mark could be read as the geographic abbreviation for Poland. Regardless of interpretation, these terms do not prevent a finding of confusing similarity between the disputed domain name and the BAYER Mark, nor does the hyphen which connects "ag" to the BAYER Mark. See, *Conair Corporation v. Istvan Horvath / WhoisGuard, Inc.*, WIPO Case No. [D2015-0129](#) (<babyliss-pl.com> addition of generic geographic terms including "pl" for Poland does not prevent a finding of confusing similarity.); see also, *L'Oréal, Lancôme Parfums et Beauté & Cie v. Jack Yang*, WIPO Case No. [D2011-1627](#).

The addition of the Top-Level Domain ".com" is irrelevant in determining whether the disputed domain name is confusingly similar. See, *Research in Motion Limited v thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#); [WIPO Overview 3.0](#), section 1.11.

Complainant's well-known BAYER Mark is fully recognizable as it is incorporated into the disputed domain name in its entirety. Accordingly, the Panel finds the disputed domain name confusingly similar to the BAYER Mark in which Complainant has rights and Complainant has thus satisfied its burden under paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Under the second element of the Policy, the complainant has to make out a *prima facie* case that the respondent does not have rights to or legitimate interests in the disputed domain name, upon which the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights to or legitimate interests in the dispute domain name. If the respondent fails to come forward with such evidence, a complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also *Virgin Enterprises Limited v. KAP Computer Solutions Pvt. Ltd.*, WIPO Case No. [D2013-0715](#).

Paragraph 4(a)(ii) of the Policy also directs an examination of the facts to determine whether a respondent has rights or legitimate interests in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, under paragraph 4(c)(i), is where "before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services".

Here, the annex to the Complaint shows the disputed domain name resolves to a parking page targeting some of Complainant's business services referenced in its international registrations with links to third parties in German, the language of the country where Complainant was organized and is headquartered, and which links possibly including competitors. Complainant contends these links are not *bona fide* given the well-known status and unique configuration of the BAYER Mark, were created to confuse Internet users into believing that the disputed domain name would direct them to an official website offering Complainant's products and services.

Prior UDRP panels have specifically found use of a disputed domain name to resolve to a parking page competing with or capitalizing on Complainant's trademark does not represent a *bona fide* use of the

disputed domain name pursuant to paragraph 4(c)(i) nor a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii). See *Microsoft Corporation v. Charilaos Chrisochou*, WIPO Case No. [D2004-0186](#); [WIPO Overview 3.0](#), section 2.9.

Based on the foregoing decisions and evidence submitted, this Panel finds the disputed domain name is not being used in connection with a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use sufficient to demonstrate Respondent has any rights or legitimate interests in the disputed domain name under the factors specified by paragraphs 4(c)(i) or (c)(iii) of the Policy.

Complainant's evidence of use in the Complaint as amended, also supports Complainant's contention that Respondent cannot claim prior rights or legitimate interest in the disputed domain name because Complainant's use of the BAYER Marks precedes the registration of the disputed domain name by decades.

The second example, under paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. Complainant states that Respondent is not related in any way to Complainant, does not carry out any activity for, nor have any business relationship with Respondent. Neither has Complainant granted Respondent any license, permission, or authorization to use the BAYER Mark, that are used and clearly recognizable in the disputed domain name or to apply for registration of the disputed domain name. Prior UDRP panels have found a lack of rights or legitimate interests under the second element of the Policy based on such circumstances. See, e.g., *F. Hoffmann-La Roche AG v. Fred*, WIPO Case No. [D2006-0246](#); *Charles Schwab & Co., Inc. v. Josh Decker d/b/a I GOT YOUR TIX*, WIPO Case No. [D2005-0179](#).

Complainant also shows that Respondent is not commonly known by the disputed domain name because the Registrar identified the underlying registrant information in its verification process as "myster shopper", ostensibly of the United Kingdom based on the apparently fraudulent postal address submitted by Respondent, which name and address Complainant named as Respondent in its amended Complaint. Respondent does not bear any resemblance to the disputed domain name whatsoever. Thus, there is no evidence in this case to suggest that Respondent is commonly known by the disputed domain name, that it is licensed or otherwise authorized to use Complainant's trademark, or that it has acquired any trademark rights relevant thereto. As such, the Panel finds this sub-section of the Policy is of no help to Respondent and the facts presented here support a finding of a lack of rights or legitimate interests in the disputed domain name. See *Confédération nationale du crédit mutuel v. Yu Ke Rong*, WIPO Case No. [D2018-0948](#); *Expedia, Inc. v. Dot Liban, Hanna El Hinn*, WIPO Case No. [D2002-0433](#).

Moreover, the nature of the disputed domain name, being essentially identical to Complainant's BAYER Marks, carries a high risk of implied affiliation, particularly when considering that the prefix "ag" may be interpreted as the business descriptor abbreviation of "Aktiengesellschaft", the German term or entity designation for a public limited company, such as Complainant, whose company shares are offered to the general public and traded on a public stock exchange. [WIPO Overview 3.0](#), section 2.5.1; see also *Tata Sons Limited v. TATA Telecom Inc/Tata-telecom.com, Mr. Singh*, WIPO Case No. [D2009-0671](#).

In light of the above, and with no (formal) Response or other submission in this case to rebut Complainant's assertions and evidence, the Panel finds that the facts of this case demonstrate that Respondent has no rights or legitimate interests in the disputed domain name. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to

the enumerated factors in Policy, paragraph 4(b). See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

Complainant contends that there can be no other explanation for Respondent to register the disputed domain name other than to target Complainant. Given the BAYER Mark is globally well known in Complainant's industry as noted in the decisions of prior UDRP panels over the past 20 years cited by Complainant, a portion of which are listed in Section 4 above, and the disputed domain name incorporates the identical BAYER Mark in its entirety, the Panel finds bad faith registration based on Respondent's likely actual knowledge of the BAYER Mark. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4.

Further, given the widespread recognition of Complainant's BAYER Mark including where Respondent says they are located, and decades of use globally of the BAYER Mark prior to Respondent's registration of the disputed domain name on May 23, 2022, the selection, configuration and use of the disputed domain name has been to cause confusion with Complainant's BAYER Mark and a false association with Complainant and therefore, the use and registration of the disputed domain name must be considered to be in bad faith. See *Empresa Brasileira de Telecomunicações S.A. Embratel v. Kevin McCarthy*, WIPO Case No. [D2000-0164](#). See also *BAYER Pty Ltd v. Varinder Rajoria, KnotSync Ltd*, WIPO Case No. [D2021-2577](#).

As found by prior UDRP panels, use of the disputed domain name for a web page competing with or capitalizing on Complainant's trademark demonstrates an indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its disputed domain name, by creating a likelihood of confusion with Complainant's BAYER Mark as to the source, sponsorship, affiliation or endorsement of Respondent, and, therefore is evidence of registration and use of the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy. See *Association des Centres Distributeurs E. Leclerc - A.C.D Lec v. Milen Radumilo*, WIPO Case No. [D2017-2003](#).

Finally, Complainant also contends that Respondent's act in creating the disputed domain name is part of a pattern of misconduct by Respondent to foist a series of frauds upon unsuspecting job applicants of Complainant who have been contacted by Respondent to defraud the prospective job applicants of money. Complainant has already obtained several decisions under the UDRP based upon facts similar to those presented here, finding bad faith use based on such misconduct under paragraph 4(b)(iv) of the Policy. See, e.g., *Bayer AG v. Withheld for Privacy Purposes Privacy service provided by Withheld for Privacy ehf / Todd Peter*, WIPO Case No. [D2021-2726](#); *Bayer AG v. Privacy Service Provided by Withheld for Privacy ehf / Todd Peter*, WIPO Case No. [D2021-3418](#); *Bayer AG v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Andrew Evera*, WIPO Case No. [D2021-4011](#) (<bayer-pl.careers>).

Lastly, in consideration of the third party claims, as noted above, the Panel finds that the Respondent used contact details associated with an otherwise unconnected third party for purposes of registering the confusingly similar disputed domain name. Such fraud is *per se* evidence of bad faith.

The Panel finds Complainant's arguments and evidence persuasive and has received no formal Response or arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and Complainant has satisfied 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, <ag-bayerpl.com>, be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: February 3, 2023