

ADMINISTRATIVE PANEL DECISION

Bayer AG v. blank blank
Case No. D2022-4640

1. The Parties

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

The Respondent is blank blank, United States of America.

2. The Domain Name and Registrar

The disputed domain name <agro-plbayercrop.com> (the “Domain Name”) 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 Domain Name. On December 5, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 December 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 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 the Respondent of the Complaint, and the proceedings commenced on December 15, 2022. According to the records of the courier instructed by the Center, the Written Notice of the Complaint was delivered to the address for the Respondent on December 16, 2022.

In accordance with the Rules, paragraph 5, the due date for Response was January 4, 2023. The Respondent did not submit any response.

The Center appointed Ian Lowe as the sole panelist in this matter on January 30, 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 corporation with a global business concerned with products and services in the fields of healthcare, nutrition, and plant protection. The Complainant and its predecessors have manufactured and marketed pharmaceutical products under the BAYER mark since 1888. The Complainant group is represented by over 374 consolidated companies in 83 countries, with more than 99,000 employees worldwide and operates a website at “www.bayer.com” promoting its business. Through its subgroup CropScience, the Complainant manufactures and sells agricultural chemicals, and markets its CropScience products around the world using a range of websites, including “www.cropscience.bayer.com”, “www.agro.bayer.com.pl” (Poland) and “www.agro.bayer.com.br” (Brazil).

The Complainant is the registered proprietor of numerous trademark registrations for the BAYER mark including International trademark No. 1462909 registered on November 28, 2018 designating 43 countries.

The Domain Name was registered on June 25, 2022. It resolves to a web portal hosted by the Registrar comprising links to pages of pay-per-click (“PPC”) links to third party websites including competitors of the Complainant.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to its BAYER trademark, that the Respondent has no rights or legitimate interests in respect of the Domain Name, and that the Respondent registered and is using the Domain Name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant’s contentions. On January 4, 2023, an email was received by the Center from an email address differing from that given by the Registrar as the contact email address of the Respondent. The email acknowledged receipt of the Written Notice of Complaint by mail and enquired as to an extension of time to review the Complaint. The Center responded on January 6, 2023, inviting the sender of the email to identify themselves and to provide information establishing the legitimacy of their request/submission in the context of the proceedings. No response was received by the Center.

6. Discussion and Findings

For this Complaint to succeed in relation to the Domain Name the Complainant must prove that:

- (i) the Domain Name is 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 respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has uncontested rights in its BAYER trademarks, both by virtue of its numerous trademark registrations around the world and as a result of the goodwill and reputation acquired through its widespread use of the mark for over 125 years. Ignoring the generic Top-Level Domain (“gTLD”) “.com”, the Domain Name comprises the entirety of the Complainant’s BAYER word mark together with a hyphen, the terms “agro” and “crop” and the letters “pl” which may be taken as the country code for Poland. In the Panel’s view, these additions do not prevent a finding of confusing similarity between the Domain Name and the Complainant’s mark.

Accordingly, the Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Complainant has made out a *prima facie* case that the Respondent could have no rights or legitimate interests in respect of the Domain Name. There is no evidence that the Respondent has ever been known by the Domain Name. The Respondent has not used the Domain Name in connection with a *bona fide* offering of goods or services but for a webpage comprising a parking page of links to pages of PPC links to third party websites including those of competitors of the Complainant.

The Respondent has never been licensed or otherwise authorized by the Complainant to use its BAYER trademark.

The Respondent has chosen not to respond to the Complaint to explain its use of the Domain Name or to take any other steps to counter the *prima facie* case established by the Complainant. In the circumstances, the Panel finds that the Respondent does not have any rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

In light of the undoubted notoriety of the Complainant’s mark, and the fact that the differences between the mark and the Domain Name comprise references to elements of the Complainant’s business, the Panel is in no doubt that the Respondent had the Complainant and its rights in the BAYER mark in mind when it registered the Domain Name. Accordingly, in the Panel’s view, the Respondent registered the Domain Name for commercial gain with a view to taking unfair advantage of the Complainant’s rights in the mark, by confusing Internet users into believing that the Domain Name was being operated by or authorized by the Complainant for legitimate purposes related to the Complainant’s activities. The provision of clearly false contact details by the Respondent on registering the Domain Name is further evidence of bad faith.

In the circumstances, the Panel finds that the Domain Name has been registered and is being used in bad faith.

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 Domain Name <agro-plbayercrop.com> be transferred to the Complainant.

/Ian Lowe/

Ian Lowe

Sole Panelist

Date: February 12, 2023