

ADMINISTRATIVE PANEL DECISION

Bayer AG v. dasofun adura
Case No. D2023-0385

1. The Parties

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

The Respondent is dasofun adura, India.

2. The Domain Name and Registrar

The disputed domain name <bayercrop-pl.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 January 27, 2023. On January 27, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 27, 2023, 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 the Complainant on January 30, 2023, 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 February 1, 2023.

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 February 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 23, 2023.

The Center appointed John Swinson as the sole panelist in this matter on February 27, 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 company with its headquarters in Germany has businesses involved in healthcare, nutrition, and plant protection. One of the Complainant's subgroups is Bayer CropScience, which develops and sells products such as insecticides, seeds and digital farming systems. The Complainant does business in over 80 countries.

The Complainant owns many registered trademarks for or including BAYER, including Australian Trademark Registration No. 242137 that was registered from September 8, 1970 and International registration number 1462909 registered from November 28, 2018.

The Complainant uses domain names for its business including <bayer.com> and subdomains including <cropscience.bayer.com>.

The disputed domain name was registered on July 1, 2022.

The Respondent did not file a Response, so little is known of the Respondent. According to the Registrar's records, the Respondent has an address in India.

The disputed domain name resolves to a website that frames a website at "www.bayer.pl". The contents of this website are in Polish. This website has a copyright notice identifying the copyright owner as "F.H.U. BAYER". The domain name <bayer.pl> is owned by a third party. There does not appear to be a relationship between the third party and the Complainant. In response to correspondence from the Complainant's lawyers, the third party replied that he did not own the disputed domain name.

5. Parties' Contentions

A. Complainant

In summary, the Complainant made the following submissions:

As a result of the exclusive and extensive use, the Complainant's BAYER trademark has acquired a significant goodwill and is widely known. Previous decisions decided under the UDRP over the past 20 years have found that the Complainant's BAYER trademark is well known.

The Complainant's BAYER trademark is recognizable in the disputed domain name.

"Bayer" is not a word any market participant or other domain name registrant would legitimately choose unless seeking to create an impression of an association with the Complainant.

The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the BAYER trademark.

There is no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. The Respondent is merely embedding the third-party website and is thus quite obviously attempting to create the false impression that the operator of the website at "www.bayer.pl" who may under certain circumstances be able to invoke his

own rights or legitimate interests in the name “Bayer”, is responsible for the disputed domain name as well. However, the embedding of the third-party website took place without the consent and knowledge of its owner. As a result, the Respondent cannot invoke any possible rights to “Bayer” to which the owner of the website at “www.bayer.pl” may be entitled.

The Respondent’s bad faith use is evidenced by the fact that it registered the disputed domain name which clearly targets the Complainant’s CropScience subgroup and uses the disputed domain name to provide a website embedding a website of an uninvolved third party to create the false impression that a rights holder is behind the registration of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The *onus* of proving these elements is on the Complainant.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As set out in Section 4 above, the Complainant has registered trademarks for BAYER.

Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy when the domain name includes the trademark, or a confusingly similar approximation, disregarding the Top-Level Domain part of the domain name (e.g., disregarding the “.com” part of the domain name).

Here, the disputed domain name includes the BAYER registered trademark in its entirety. The addition of the letters “pl” (which commonly means “Poland”), the word “crop” (which relates to the Complainant’s field of business) and a dash do not prevent a finding that the disputed domain name is confusingly similar to the Complainant’s BAYER registered trademark.

The Complainant succeeds on the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant's allegations to support the Respondent's lack of rights or legitimate interests in the disputed domain name are set out in Section 5A above.

There is no evidence that the Respondent is commonly known by the disputed domain name. The disputed domain name was registered many decades after the Complainant established its trademark rights in BAYER.

Having regard to all these matters, the Panel finds that the *prima facie* case established by the Complainant has not been rebutted by the Respondent and the Complainant succeeds on the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and subsequently used the disputed domain name in bad faith.

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by the complainant. *Fifth Street Capital LLC v. Fluder (aka Pierre Olivier Fluder)*, WIPO Case No. [D2014-1747](#).

The disputed domain name includes the Complainant's well-known trademark and the word "crop", thus suggesting an association with the Complainant's CropScience subgroup. This strongly suggests that the Respondent was aware of the Complainant and registered the disputed domain name because of the Complainant's reputation. The Respondent's decision to register the disputed domain name is most likely motivated by an awareness of the Complainant and the Complainant's trademark.

It is not apparent why a person in India would register a domain name that includes the Complainant's trademark and references to the Complainant's CropScience group, and then frame a Polish website not relating to the Complainant or to crops.

On the balance of probabilities, the Panel is satisfied that the Respondent most likely registered the disputed domain name to impersonate the Complainant and therefore for a dishonest purpose. That the Respondent is currently framing another's website does not mean that the Respondent cannot put this dishonest plan into practice at any time. As suggested by the Complainant, one may view the disputed domain name, in the hands of the Respondent, as an unjustifiable threat hanging over the head of the Complainant and thus constituting a current and continuing abusive use of the disputed domain name. *Allen & Overy LLP v. Olivia*, WIPO Case No. [D2021-0860](#); *CK Franchising, Inc. v. Registration Private, Domains By Proxy, LLC / Ofelia Seropyan*, WIPO Case No. [D2021-4219](#). The Panel finds that the disputed domain name has been registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

The Panel also accepts the Complainant's contentions, absent any response or reply from the Respondent, that the Respondent's use of the disputed domain name to frame a website unrelated to the Complainant was also, in part, undertaken for the purpose of disrupting the Complainant's business while at the same time disguising the Respondent's identity. Compare *BR IP Holder LLC v. Registrant [1966810]: Tech Administrator*, WIPO Case No. [D2009-1358](#).

The Panel finds that the Respondent registered and used the disputed domain name in bad faith.

The Complainant succeeds on the third element 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 <bayercrop-pl.com> be transferred to the Complainant.

/John Swinson/

John Swinson

Sole Panelist

Date: March 13, 2023