

## **ADMINISTRATIVE PANEL DECISION**

**Bayer AG v. M'Bow Julien Alloune Badara**

**Case No. D2023-2851**

### **1. The Parties**

The Complainant is Bayer AG, Germany, represented by pm.legal, Germany.

The Respondent is M'Bow Julien Alloune Badara, France.

### **2. The Domain Name and Registrar**

The disputed domain name <bayer-fr.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 July 4, 2023. On July 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 5, 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 (Redacted For Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 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 July 9, 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 July 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 7, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on August 17, 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 operates in the health care, nutrition, and plant protection businesses on five continents, manufacturing and selling, *inter alia*, pharmaceutical and medical care products, veterinary products, diagnostic products, and agricultural chemicals.

The Complainant's history 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. In 1881, the name was transferred to a stock corporation called "Farbenfabriken vorm. Friedrich Bayer & Co." which began manufacturing and marketing pharmaceutical products in 1888 and has sold such products under the BAYER trademark ever since.

The Complainant is the owner of the following, amongst numerous others, trademarks:

- International trademark registration No. 1462909, for BAYER, registered on November 28, 2018, in classes 1, 3, 5, 9, 10, 31, 35, 41, 42 and 44;
- International trademark registration No. 1476082, for BAYER, registered on December 10, 2018, in classes 7, 8, 11, 16, 20, 24, 25, 28, 30, 32, 37, 38, 39, 40, 43 and 45.

The Respondent registered the disputed domain name on April 26, 2023. The disputed domain name is used in connection with a parking website featuring advertising links for third parties' websites, including links to the Complainant's competitors.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

- the disputed domain name is confusingly similar to its trademarks;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name;
- the Respondent has registered and is using the disputed domain name in bad faith.

##### B. Respondent

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

#### 6. Discussion and Findings

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (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 respect of 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**

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other sign (like the dash "-") or other terms like "fr" (for France) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

## **C. Registered and Used in Bad Faith**

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent registered a domain name containing the entirety of the trademark BAYER which is a well-known trademark. See *Bayer AG v. blank blank*, WIPO Case No. [D2023-0520](#).

Therefore, there is a presumption of bad faith registration by the unaffiliated Respondent of the disputed domain name given that it reproduces the Complainant's BAYER trademark in its entirety. Indeed, there is

no doubt that the Respondent was aware of the Complainant and its BAYER trademark and has precisely chosen and registered the disputed domain name in bad faith.

As described above, the disputed domain name is used in connection with a parking website featuring advertising links for third parties' websites, including links to the Complainant's competitors.

Thus the Panel finds that the Respondent is using the disputed domain name to intentionally attract, for commercial gain, Internet users to the disputed domain name, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the disputed domain name as described under Paragraph 4(b) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <bayer-fr.com> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: August 24, 2023