

ADMINISTRATIVE PANEL DECISION

Bayer Intellectual Property GmbH v. Liu Fen
Case No. DCO2023-0035

1. The Parties

The Complainant is Bayer Intellectual Property GmbH, Germany, represented by BPM Legal, Germany.

The Respondent is Liu Fen, China.

2. The Domain Name and Registrar

The disputed domain name <qlaira.co> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 30, 2023. On March 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 31, 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 (Registration Private, Domains by Proxy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 3, 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 April 5, 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 April 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 3, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on May 9, 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

Whereas the Respondent has not submitted any response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is a corporation, incorporated under the laws of Germany, belongs to the Bayer group of over 300 companies doing business on all five continents, manufacturing and selling numerous of products, *inter alia*, human pharmaceutical and medical care products, veterinary products, diagnostic products, and agricultural chemicals. The Bayer group markets a drug for hormonal contraception (contraceptive pill) under the trademark QLAIRA in almost every country in the world.

The Complainant owns a large portfolio of QLAIRA trademarks, one of which is as following:

- International Registration No. 934428, QLAIRA, registered on August 1, 2007, designating among others China.

In addition, the Complainant owns many domain names, including the domain name <qlaira.com>.

The disputed domain name was registered on November 24, 2022, and the Complainant has provided evidence that the disputed domain name is offered for sale for USD 1,450 on a third party website.

5. Parties' Contentions

A. Complainant

The Complainant's contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is identical to its trademark, since the disputed domain name fully incorporates the Complainant's QLAIRA trademark. The country code Top-Level Domain ("ccTLD"), in this case ".co", should not be an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between the Complainant's trademark and the disputed domain name.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant confirms that the Complainant has not licensed or otherwise permitted the Respondent to use its QLAIRA trademark or to register the disputed domain name incorporating its QLAIRA trademark. Furthermore, 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. Since proving a negative circumstance is always more difficult than establishing a positive one, the Respondent should bear the burden of production of evidence showing that the Respondent has rights or legitimate interests in respect of the disputed domain name once the Complainant has made out a *prima facie* case. The Respondent does not show any such evidence in this case.

Third, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. With regard to the bad faith registration, considering that the QLAIRA trademark is highly distinctive and not associated with any third-party product or service, it is therefore beyond the realm of reasonable coincidence that the Respondent chose the disputed domain name without the intention of invoking a misleading association with the Complainant. With regard to the bad faith use, what is being done by the Respondent is merely offering the disputed domain name for sale. The Respondent's use of the disputed domain name in such a way should be qualified to disrupt the Complainant's business.

Further, the Complainant points out that the Respondent has been found that he acted in bad faith in at least 10 proceedings under the UDRP.

B. Respondent

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

6. Discussion and Findings

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any substantive arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (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

The Panel finds that the Complainant has the right in the QLAIRA trademark. The disputed domain name includes the Complainant's QLAIRA trademark as a whole. Such inclusion is by itself enough to have the disputed domain name be identical or confusingly similar to the Complainant's QLAIRA trademark. Incidentally, as well established in prior UDRP decisions, the ccTLD ".co", which is assigned to Columbia, contained in the disputed domain name may be disregarded in the determination of the first element.

Therefore, the Panel finds that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights. The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

There is no evidence at all that shows the Respondent is commonly known by the name "Qlaira". The Respondent is not affiliated with the Complainant or authorized or licensed to use the Complainant's QLAIRA trademark. Furthermore, the Panel finds 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. The evidence provided by the Complainant shows that the disputed domain name is offered for sale for USD 1,450 on a third party website.

According to prior UDRP decisions, it is sufficient that the Complainant shows *prima facie* that the Respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production to the Respondent. The Panel finds that the Respondent did not reply to the Complainant's *prima facie* contentions in this proceeding.

Therefore, the Panel finds on the available record that the Complainant has established an un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Moreover, the disputed domain name is inherently misleading as it effectively impersonates or suggests sponsorship or endorsement by the Complainant.

The Panel finds that the above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

UDRP panels have consistently found that the mere registration of a domain name that is identical to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. The Complainant is one of the worldwide famous group of companies manufacturing and selling numerous of products, *inter alia*, human pharmaceutical and medical care products, veterinary products, diagnostic products, and agricultural chemicals. The QLAIIRA is the brand name of one of the Complainant's consumer products. Considering such facts, it is highly unlikely that the Respondent would not have known of the Complainant's right in the QLAIIRA trademark at the time of registration of the disputed domain name. Nothing in the disputed domain name bears any reasonable relevance to the Respondent. In consideration of the uniqueness of the QLAIIRA trademark, there can be found no reasonable possibility of fortuity in the Respondent's innocent registration of the disputed domain name. It is found, accordingly, that the Respondent registered the disputed domain name in bad faith.

With regard to the requirement that the Respondent is using the disputed domain name in bad faith, the fact that the Respondent is offering the disputed domain name for sale shows the Respondent's use of the disputed domain name in bad faith. Furthermore, the evidence provided by the Complainant shows that the Respondent has been involved in at least 10 UDRP proceedings in which the panels found the Respondent's bad faith in registration and using the domain names. Therefore, the Respondent has established a pattern of bad faith conduct pursuant to paragraph 4(b)(ii) of the Rules.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

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, <qlaira.co>, be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: May 23, 2023