

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Premium Domain Seller
Case No. DCO2023-0005

1. The Parties

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

The Respondent is Premium Domain Seller, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2023. On January 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 13, 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 PROTECTION) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 23, 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 January 25, 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 paragraphs 2 and 4 of the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 26, 2023. In accordance with paragraph 5 of the Rules, the due date for Response was February 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 16, 2023.

The Center appointed Yuji Yamaguchi as the sole panelist in this matter on February 20, 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 paragraph 7 of the Rules.

4. Factual Background

The Complainant is a global enterprise with core competencies in the fields of healthcare, nutrition, and plant protection. The Complainant began manufacturing and marketing pharmaceutical products in 1888 and has sold such products under the BAYER marks (the “BAYER Marks” or “BAYER Mark”) ever since that time. The Complainant’s stock is included in nearly all the major share indices, traded on all German stock exchanges and included in the DAX 40, a Blue-Chip stock market index consisting of the 40 major German companies trading on the Frankfurt Stock Exchange. The Complainant is represented by over 374 consolidated companies in 83 countries and has more than 99,000 employees worldwide. The Complainant, itself or through the subgroups like HealthCare and CropScience, does business on all five continents, manufacturing and selling numerous of products, *inter alia* human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals.

The Complainant is the owner of about 700 registrations and pending applications of the BAYER Marks, including the International trademarks nos. 1462909 and 1476082, registered since November 28, 2018, and December 10, 2018, respectively. The Complainant’s registrations cover an extensive range of goods and services. The Complainant and its subsidiaries own hundreds of domain name registrations containing the BAYER Marks, including <bayer.com>, <bayer.co.nz>, <bayer.com.au>, <bayer.co>, <bayer.com.pl>, and <bayer.us>.

The disputed domain name was registered on April 12, 2022. The disputed domain name is currently offered for sale for USD 950 at “dan.com”.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

The disputed domain name fully incorporates the BAYER Marks and is confusingly similar to the BAYER Marks. The specific Top-Level Domain (“TLD”) is generally not 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. Confusing similarity is given where a trademark is recognizable as such within the domain name. The additional words “crop” and “science” are merely generic and not suitable to eliminate the similarity between the Complainant’s trademark and the disputed domain name. The use of the BAYER Marks in combination with these terms will definitely confuse Internet users as it is referring directly to one of the Complainant’s subgroups, which uses the domain name <cropsience.bayer.com> to provide information on its products.

The burden of proof with regard to the rights or legitimate interests of the Respondent lies on the Complainant. However, satisfying the burden of proving a lack of the Respondent’s rights or legitimate interests in respect of the disputed domain name according to paragraph 4(a) of the Policy is quite onerous, since proving a negative circumstance is always more difficult than establishing a positive one. Accordingly, it is sufficient that the Complainant shows *prima facie* evidence in order to shift the burden of production on the Respondent. The BAYER Marks are well known and obviously connected with the Complainant and its products. “BAYER” is not a word any market participant or other domain registrant would legitimately choose unless seeking to create an impression of an association with the Complainant. The Complainant has not permitted the Respondent to apply for or use any domain name incorporating the BAYER Marks. These circumstances themselves are sufficient to constitute *prima facie* showing by the Complainant of absence of rights or legitimate interests in the disputed domain name on the part of the Respondent. 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 merely offers the disputed domain name for sale. Such use is neither a *bona fide* use of the disputed domain name pursuant to

paragraph 4(c)(i) of the Policy. There is also no evidence which suggests that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or is commonly known by the disputed domain name or the name "Bayer Crop Science".

Based on the Complainant's high profile worldwide and the fact that the disputed domain name combines the BAYER Marks with the words "crop" and "science" and therefore obviously targets the Complainant's CropScience subgroup, it is inconceivable that the Respondent registered the disputed domain name unaware of the Complainant and its rights in its highly distinctive and well-known BAYER Marks. The Respondent's offer to sell the disputed domain name on a public website has been found to indicate that the disputed domain name has primarily been registered with the intention of selling it to the Complainant or one of its competitors in return for a payment that exceeds the costs directly related to the disputed domain name as set out in paragraph 4(b)(i) of the Policy. The Respondent's registration of the disputed domain name clearly prevents the Complainant from reflecting its trademarks in a corresponding domain name and the Respondent has engaged in a pattern of such conduct, as set out in paragraph 4(b)(ii) of the Policy. The Respondent's use of the disputed domain name is qualified to disrupt the Complainant's business and that it is capable of reducing the number of visitors to the Complainant's website, may adversely affect the Complainant's business and therefore constitutes bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must assert and prove the following three elements are present:

- (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 Complainant registered and owns the BAYER Marks in numerous jurisdictions throughout the world. The disputed domain name incorporates the BAYER Mark in its entirety with the addition of the name of the Complainant's subgroup, CropScience, and the TLD ".co".

As noted in section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of confusing similarity test. The Complainant's BAYER Mark is readily recognizable within the disputed domain name and the addition of the name of the Complainant's subgroup, Crop Science, does not prevent a finding of confusing similarity (see *Bayer AG v. FlokiNET Ltd WhoisProtection, FlokiNET Ltd*, WIPO Case No. [D2020-2907](#); see also *Bayer AG v. Withheld for Privacy Purposes Privacy service provided by Withheld for Privacy ehf / Todd Peter*, WIPO Case No. [D2021-2726](#)).

The TLD ".co" is viewed as a standard registration requirement and as such is disregarded under the first element of confusing similarity test (see section 1.11.1 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's BAYER Marks.

B. Rights or Legitimate Interests

While the overall burden of proof is on the Complainant, proving that the Respondent lacks rights or legitimate interests in the disputed 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 the Complainant makes out a *prima facie* case that the Respondent lacks rights or legitimate interests, the burden of production on the second element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. See section 2.1 of [WIPO Overview 3.0](#).

As the Complainant asserted, the Complainant has not permitted the Respondent to apply for or use any domain name incorporating the BAYER Marks. For now, the disputed domain name redirects to the “dan.com” website which shows that the disputed domain name is offered for sale for USD 950. The Respondent neither uses the disputed domain name in connection with a *bona fide* offering of goods or services nor makes a legitimate noncommercial or fair use of the disputed domain name under paragraphs 4(c)(i) and (iii) of the Policy.

Therefore, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests, the burden of production on the second element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

As the Respondent failed to submit a response or to provide any evidence, the Complainant is deemed to have satisfied the second element. Thus, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant’s BAYER Marks have acquired a significant goodwill and are widely known by the Complainant’s long history of exclusive and extensive use. The Respondent must have chosen the registration of the disputed domain name seeking to create an impression of an association with the Complainant and its subgroup. The Panel finds that the disputed domain name has been registered in bad faith.

The Panel also finds that the Respondent has registered the disputed domain name in order to prevent the Complainant from reflecting the BAYER Marks in a corresponding domain name. Moreover, the disputed domain name’s listed price of USD 950 at the “dan.com” website likely exceeds the out-of-pocket costs directly related to the disputed domain name. Under these circumstances, the disputed domain name is considered to be used in bad faith (see *Elecnor, S.A. v. Privacy Protection / Premium Domain Seller, YUHUAYUAN, BEIJINGDONGLU, HUAIYINQU*, WIPO Case No. [D2022-1534](#)).

Consequently, the Panel concludes that the disputed 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 disputed domain name <bayercropscience.co> be transferred to the Complainant.

/Yuji Yamaguchi/

Yuji Yamaguchi

Sole Panelist

Date: March 6, 2023