

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Mary Aurelien

Case No. D2023-2617

1. The Parties

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

Respondent is Mary Aurelien, Poland.

2. The Domain Name and Registrar

The disputed domain name <bayer-sciences.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 June 17, 2023. On June 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 19, 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 Complainant on June 20, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on June 21, 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 Respondent of the Complaint, and the proceedings commenced on June 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 13, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on July 19, 2023.

The Center appointed Frederick M. Abbott as the sole panelist in this matter on July 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

Complainant is owner of registrations for the word trademark BAYER, including registrations as an International Trademark under the Madrid System, registration number 1462909, registration dated November 28, 2018, in international classes (ICs) 1, 3, 5, 9, 10, 31, 35, 41, 42 and 44, covering, *inter alia*, chemicals and medical preparations, designating approximately 40 countries, and; registration number 1476082, registration dated December 10, 2018, in ICs 7, 8, 11, 16, 20, 24, 25, 28, 30, 32,37, 38, 39, 40, 43, and 45, covering, *inter alia*, equipment for pharmaceutical manufacturing and services related thereto, designating approximately 16 countries.

Complainant is a major multinational corporation with primary focus on pharmaceuticals and agricultural chemicals. Complainant employs nearly 100,000 individuals worldwide, and its shares are listed on several major securities exchanges. Complainant asserts that it has been using the BAYER trademark in commerce since as early as 1888. Complainant operates a commercial website at “www.bayer.com”, and it is registrant of numerous BAYER-formative domain names.

According to the Registrar’s verification, Respondent is registrant of the disputed domain name. According to a Whois Lookup record provided by Complainant, the record of registration of the disputed domain name was created on May 26, 2023. There is no evidence on the record of this proceeding that any party other than Respondent has owned or controlled the disputed domain name since its creation date.

Respondent has not associated the disputed domain name with an active website. Respondent has used the disputed domain name as the sender’s email domain listed in falsified documents it appears to have prepared offering employment with Complainant’s Danish subsidiary. These documents were addressed to an individual situated in India, although whether and when they may have been transmitted to that individual is not clear.¹ The documents purport to originate with Complainant’s Danish subsidiary under the signature of a person claiming to be employed by Complainant (as Chief Employee Officer), but there is no such person employed by Complainant’s Danish subsidiary. The falsified documentation includes considerable detail regarding the terms and conditions of employment, and what appears to be (though falsified) a letter from the Danish Ministry of Foreign Affairs approving a visa and work permit “under a diplomatic preference”. One of the documents requests the listing of certain employee details from the person seeking employment, including passport number, although that third party’s passport number is already listed in the falsified documents. Complainant indicates that it has been the victim of a series of frauds the intent of which appears to be to extract money from alleged job candidates.

Respondent has been involved in at least two previous UDRP cases involving Complainant in which abusive domain registration and use was found: *Bayer AG v. Mary Aurelien*, WIPO Case No. [D2022-4077](#), and *Bayer AG v. Mary Aurelien*, WIPO Case No. [D2022-4638](#).

5. Parties’ Contentions

A. Complainant

Complainant alleges that it is owner of rights in the trademark BAYER and that the disputed domain name is confusingly similar to that trademark.

Complainant argues that Respondent lacks rights or legitimate interests in the disputed domain name because: (1) Complainant’s trademark is well-known and a domain name registrant would not legitimately use Complainant’s trademark in a domain name unless trying to give the impression of association with Complainant; (2) Complainant has not licensed or otherwise authorized Respondent to use any of its trademarks in any domain name, including in the disputed domain name; (3) there is no evidence that

¹ The evidence furnished by Complainant does not include fraudulently transmitted email “as such”, but rather inclusion on documents of an email address including the disputed domain name as the sender domain.

Respondent used or made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services, and; (4) there is no evidence to suggest that Respondent is making a legitimate noncommercial or fair use of the disputed domain name or is commonly known by the disputed domain name or by "bayer-sciences".

Complainant contends that Respondent registered and is using the disputed domain name in bad faith because: (1) it is inconceivable that Respondent registered the disputed domain name unaware of Complainant and its rights in the BAYER trademark; (2) it is evident that Respondent registered the disputed domain name with the intention to further a fraudulent scheme; (3) Respondent's registration of the disputed domain name prevents Complainant from reflecting its trademarks in a corresponding domain name, and Respondent has engaged in a pattern of such conduct; (4) Respondent's registration of the disputed domain name that is obviously connected with Complainant suggests opportunistic bad faith; (5) 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", and; (6) Respondent's registration of the disputed domain name constitutes an abusive threat "hanging over the head of the Complainant".

Complainant requests the Panel to direct the Registrar to transfer the disputed domain name to Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

It is essential to Policy proceedings that fundamental due process requirements be met. Such requirements include that a respondent have notice of proceedings that may substantially affect its rights. The Policy and the Rules establish procedures intended to ensure that respondents are given adequate notice of proceedings commenced against them and a reasonable opportunity to respond (see, e.g., Rules, paragraph 2(a)).

The Center formally notified the Complaint to Respondent at the email and physical addresses provided in its record of registration. Courier delivery of the Complaint to Respondent could not be completed because of an inaccurate physical address in Respondent's record of registration. There is no indication of difficulty in transmission of email notification to Respondent. The Center took those steps prescribed by the Policy and the Rules to provide notice to Respondent, and those steps are presumed to satisfy notice requirements.

Paragraph 4(a) of the Policy sets forth three elements that must be established by a complainant to merit a finding that a respondent has engaged in abusive domain name registration and use and to obtain relief. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights;
- (ii) 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.

Each of the aforesaid three elements must be proved by a complainant to warrant relief.

A. Identical or Confusingly Similar

Complainant has provided substantial evidence of rights in the trademark BAYER, including by registration as an International Trademark through the Madrid System, and by use in commerce (see Factual

Background *supra*). Respondent has not challenged Complainant's assertion of trademark rights. The Panel determines that Complainant owns rights in the trademark BAYER.

The disputed domain name directly and fully incorporates Complainant's BAYER trademark. Direct and full incorporation of Complainant's trademark in the disputed domain name is sufficient to establish confusing similarity within the meaning of the Policy. The addition of a hyphen and the term "sciences" to Complainant's trademark does not prevent a finding of confusing similarity between the disputed domain name and Complainant's trademark.² The disputed domain name is confusingly similar to Complainant's BAYER trademark within the meaning of the Policy.

The Panel determines that Respondent has established rights in the trademark BAYER, and that the disputed domain name is confusingly similar to Complainant's BAYER trademark.

B. Rights or Legitimate Interests

Complainant's allegations to support Respondent's lack of rights or legitimate interests in the disputed domain name are outlined above in section 5.A, and the Panel finds that Complainant has made a *prima facie* showing that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not replied to the Complaint, and has not attempted to rebut Complainant's *prima facie* showing of lack of rights or legitimate interests.

Respondent's use of the disputed domain name as the sender email domain within a falsified offer to a third party of employment with Complainant does not establish rights or legitimate interests in the disputed domain name.³ Such use by Respondent does not constitute legitimate noncommercial or fair use of the disputed domain name.

There is no indication that Respondent was commonly known by the disputed domain name or Complainant's trademark, or that it made or prepared to make a *bona fide* use of the disputed domain name and/or Complainant's trademark prior to notice of this dispute. Respondent's registration and use of the disputed domain name does not otherwise manifest rights or legitimate interests.

The Panel determines that Complainant has established that Respondent lacks rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In order to prevail under the Policy, Complainant must demonstrate that the disputed domain name "has been registered and is being used in bad faith" (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy states that "for the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith". These include, "(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or (iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location".

² The generic Top-Level Domain ("gTLD") ".com" is viewed as a technical requirement and as such is disregarded.

³ It is not clear from the record whether such falsified offer of employment was transmitted by Respondent to the identified third-party recipient. Whether or not it was transmitted, it does not establish rights or legitimate interests on the part of Respondent.

Complainant's BAYER trademark was registered and used long before Respondent registered the disputed domain name. Complainant's trademark is sufficiently well known and readily identified through a simple Internet search that Respondent could not plausibly have been unaware of Complainant's rights when it registered the disputed domain name. Moreover, Respondent's use of the disputed domain name as the sender domain in an email address within documents falsely purporting to originate from Complainant indicates that Respondent was deliberately seeking to convey an association with Complainant and its business.

Respondent appears to have prepared documents for transmittal to a third party based in India containing a falsified offer of employment with Complainant's Danish subsidiary. In those documents, the disputed domain name is included as the sender domain in an email address at which the third-party might contact Complainant's non-existent employee. The falsified documentation contains considerable detail regarding the terms and conditions of employment, work visa, etc. Complainant has not provided direct evidence of Respondent's transmittal of the falsified offer of employment, or of the mode of Respondent's transmittal. However, Respondent has not replied to the Complaint and has not disclaimed preparation of, or association with, the falsified documents. In light of Respondent's failure to challenge the aforesaid evidence, the Panel presumes the falsified documents were prepared by Respondent and were intended for transmittal to the named third party. The falsified documents constitute part of a scheme to defraud by making use of the disputed domain name, whether or not the scheme was carried out. This constitutes bad faith within the meaning of paragraph 4(b)(iv) of the Policy in that Respondent has intentionally used the disputed domain name to attract for commercial gain Internet users to its online location by creating a likelihood of confusion regarding Complainant's association with Respondent's online (email) location.

This is the third preceding in which Respondent has been challenged by Complainant for abusive registration and use of a disputed domain name incorporating Complainant's trademark, with two previous decisions finding against Respondent. Such repeated conduct that prevented Complainant from reflecting its mark in corresponding domain names constitutes bad faith within the meaning of paragraph 4(b)(ii) of the Policy.

Respondent has not replied to the Complaint. It has not challenged the evidence presented by Complainant, and it has not offered any potentially justifiable reason for registering and using the disputed domain name.

The Panel determines that Respondent registered and is using the disputed domain name in bad faith within the meaning of paragraph 4(b)(ii) and (iv) 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, <bayer-sciences.com>, be transferred to Complainant.

/Frederick M. Abbott/

Frederick M. Abbott

Sole Panelist

Date: August 3, 2023