

ADMINISTRATIVE PANEL DECISION

BASF SE v. Basf Chemicals, Basf Chemicals Case No. D2022-0093

1. The Parties

The Complainant is BASF SE, Germany, represented by IP Twins, France.

The Respondent is Basf Chemicals, Basf Chemicals, United States of America.

2. The Domain Name and Registrar

The disputed domain name <basf-chemicals.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 12, 2022. On January 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 13, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 14, 2022 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 18, 2022.

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 January 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 14, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on February 17, 2022. 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 large manufacturer of chemicals which is listed on the London, Frankfurt, and Zurich stock exchanges. It has customers in over 200 countries and employs over 112,000 employees worldwide. The Complainant's primary brand is BASF and it owns trade marks in multiple jurisdictions to protect this trading style. These include, by way of example only, International Trade Mark, registration number 638794, for BASF in classes 3, 5 and 30, registered on May 3, 1995. Additionally the Complainant owns many domain names which comprise or include its BASF mark, including <basf.com>, <basf.biz> and <basf.co.uk>.

The disputed domain name was registered on October 1, 2021. It resolves to a website headed "BASF Chemicals", beneath which is the claim "One Stop Shop For All Kind of Chemicals!". A wide range of chemicals is displayed for sale¹.

5. Parties' Contentions

A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. The disputed domain name is highly similar to its BASF trade marks and likely to create confusion in the minds of the general public, not least because it incorporates the Complainant's mark in full and the additional term within the disputed domain name, namely "chemicals", undoubtedly relates to the Complainant's core business.

The Complainant says that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The fact that the Respondent has included the Complainant's BASF mark in its name cannot be considered as amounting to a legitimate interest in these circumstances as it has adopted this name for the purpose of creating an impression of an association with the Complainant in order to benefit from the Complainant's name and attract customers; see *BASF SE v. jing liu/liujing*, WIPO Case No. [D2014-1889](#) and *Compagnie Gervais Danone v. Chen S*, WIPO Case No. [D2009-0288](#).

To the best of the Complainant's knowledge, the Respondent has not acquired any trade marks relating to BASF, nor is the Respondent licensed or otherwise authorized by the Complainant to use its marks.

The Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods and services in that the disputed domain name resolves to an active website impersonating the Complainant and offering chemical products for sale. The Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the burden of production shifts to the Respondent to establish that it does.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. Its BASF marks are so well-widely known that it is inconceivable that the Respondent was unaware of the Complainant's rights at the date of registration of the disputed domain name. The Respondent likely chose the disputed domain name in the hope and expectation that Internet users searching for the Complainant's services and products would instead come across the Respondent's website.

Any use by the Respondent of the disputed domain name infringes the Complainant's trade mark rights and is an attempt to prevent the Complainant from reflecting its trade mark and company name in a domain

¹ As explained at section 4.8 of the WIPO Overview 3.0: "Noting in particular the general powers of a panel articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision." With this in mind, the Panel has visited the Respondent's website in order to obtain an understanding of its content.

name. Moreover, the Respondent's use of the disputed domain name in connection with a website impersonating the Complainant and creating confusion in the minds of Internet users cannot be seen as in good faith.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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 has provided details of a number of the registered trade marks it owns for BASF, including the registration in respect of which full details have been provided above, which thereby establish its rights in this mark.

As a technical requirement of registration, the Top Level Domain, that is ".com" in the case of the disputed domain name, is typically disregarded when assessing confusing similarity. The disputed domain name comprises the Complainant's BASF mark, in full and without alteration, followed by a hyphen and the word "chemicals". These additional elements do not prevent the disputed domain name from being considered confusingly similar to the Complainant's mark. As explained at section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), if a trade mark is recognizable within a domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.

The Complainant's BASF mark is clearly recognizable within the disputed domain name and the Panel therefore finds that it is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used or prepared to use the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

The disputed domain name combines the Complainant's BASF mark with a description of the goods for which the Complainant's mark is most frequently registered and used, namely chemicals, and is being used

in order to offer for sale such goods to Internet users. In the absence of any explanation from the Respondent, the only inference which can reasonably be drawn is that the Respondent intends to mislead the Internet users into believing that its website is owned and operated, or authorized, by the Complainant. Such use does not comprise a *bona fide* offering of goods and services. As found by the panel in *Philipp Plein v. Privacy Protection Service INC d/b/a PrivacyProtect.org / Norma Brandon, cheapphilipplein*, WIPO Case No. [D2015-1050](#); “The Respondent’s use of a domain name that is confusingly similar to the Complainant’s trade marks in order to attract Internet users looking for genuine products of the Complainant’s company and to offer them unauthorized copies instead is a ‘bait and switch’ strategy that lacks *bona fides* and does not give rise to rights or a legitimate interests under the Policy”. See also section 2.13.1 of the [WIPO Overview 3.0](#) which explains that “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent”.

In point of fact, there are indications that the Respondent’s website is non-functioning. The Panel notes, by way of example, that the contact address provided at the foot of the home page is “1908 Street Name, City Name, United States” and that other links on the home page are either not functioning at all or (as in the “Testimonials” section, for example) simply contain “*Lorem ipsum*” text. The creation of a dummy website does not convey any rights or legitimate interests to the Respondent; see *uni-assist e.V. (Arbeits- und Servicestelle für internationale Studienbewerbungen) v. WholsGuard, Inc. / Uni Assist*, WIPO Case No. [D2018-2429](#).

Whilst the registrant of the disputed domain name is “BASF Chemicals”, in the circumstance of this case, this does not establish that the Respondent is commonly known by the disputed domain name. As explained at section 2.3 of the [WIPO Overview 3.0](#); “Insofar as a respondent’s being commonly known by a domain name would give rise to a legitimate interest under the Policy, panels will carefully consider whether a respondent’s claim to be commonly known by the domain name – independent of the domain name – is legitimate”. The Respondent has not provided any explanation to the circumstances in which it adopted the Complainant’s well-known mark in order to sell goods that are similar or identical to those sold by the Complainant. Accordingly, its use of registrant details similar to the Complainant’s corporate name and its BASF trade mark is most likely part of the Respondent’s overall objective of misleading Internet users into believing that it is the Complainant or is closely associated with it. As explained by the panel in *Compagnie Gervais Danone v. Chen S (supra)* “the use of DANONE in Respondent’s company name appears to be a ruse to mask its illegitimate use Complainant’s trademark in a domain name. Moreover, Respondent has not submitted any persuasive evidence of why it chose its company name”.

The third circumstance is also inapplicable; the use being made by the Respondent of the disputed domain name is commercial in nature and the characteristics of the disputed domain name suggest an affiliation or connection with the Complainant which prevents its composition from comprising fair use.

The Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name and the burden of production shifts to the Respondent to show that it does. In the absence of any response from the Respondent, the Panel finds that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The only known use of the disputed domain name has been to resolve to a website which uses the Complainant’s mark in order to sell identical or similar goods to the Complainant. It is therefore evident that the Respondent registered the disputed domain name with an awareness of the Complainant’s mark and with the intention of taking unfair advantage of it. As explained by the panel in *Costco Wholesale Membership Inc. and Costco Wholesale Corporation v. Almantas Kakareka and Hostmaster Oneandone, 1&1 Internet, Inc.*, WIPO Case No. [D2007-1833](#); “Substantial authority exists to the effect that registration of a domain name that is confusingly similar to a famous trademark by any entity that has no relationship to that

mark is itself sufficient evidence of bad faith registration and use". The Panel therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

Paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website. The use to which the Respondent has put the disputed domain name falls within this circumstance in that the form and content of its website will lead Internet users to believe that it is operated by, or with the authorization of, the Complainant. Such a belief will be reinforced because of the confusing similarity between the disputed domain name and the Complainant's BASF trade mark. The creation and use of a dummy website is equally in bad faith as the Respondent is still seeking to create the same confusion among Internet users; see *The RMR Group LLC v. Registration Private, Domains By Proxy, LLC / Rakesh Singh*, WIPO Case No. [D2019-1364](#).

The Panel accordingly finds 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 <basf-chemicals.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: March 3, 2022