

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Andrew Evera
Case No. D2022-0514

1. The Parties

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

The Respondent is Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf, Iceland / Andrew Evera, Canada.

2. The Domain Name and Registrar

The disputed domain name <agro-bayerpl.com> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 14, 2022. On February 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 15, 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 February 23, 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 March 7, 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 March 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 29, 2022.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on March 31, 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 operates in the field of healthcare and agricultural chemicals. The company name BAYER dates back to 1863 and has been used as trademark since 1888. The Complainant has more than 250 entities worldwide. The Complainant owns hundreds of trademark registrations for BAYER such as International registration No. 1462909 registered on November 28, 2018 and International registration No. 1476082 registered on December 10, 2018.

The disputed domain name was registered by the Respondent on November 23, 2021. The disputed domain name resolves to a parked webpage hosting pay-per-click (“PPC”) sponsored links. These are links showing agricultural medical and pharmaceutical products. According to the Complainant, the Respondent is engaged in a scam targeting the Complainant and particularly its Crop Science subgroup.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights. The disputed domain name incorporates the Complainant’s trademark in full. The generic Top-Level Domain (“gTLD”) “.com” should typically be ignored. The Complainant’s trademark is recognizable and the words “agro” and “pl” do not eliminate similarity. On the contrary, they refer to one of the Complainant’s subgroups.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The trademark BAYER is well-known and is connected with the Complainant. The Complainant did not authorize the Respondent to use its trademark in the disputed domain name. There is also no evidence to show the Respondent’s use of or demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. There is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name or that the Respondent is commonly known by the disputed domain name.

The Complainant contends that the disputed domain name is registered and is being used in bad faith. The Respondent knew of the Complainant’s trademark as the Complainant and its trademark are well-known. This is further evidenced by the fact that the disputed domain name targets the Complainant’s Crop-Science subgroup. Clearly, there is an intent to create an impression of association with the Complainant. The disputed domain name is registered with the intent to forward Internet users to a website featuring advertising links of third party websites. The Respondent is trying to divert traffic intended for the Complainant’s website to its own for commercial gain. This is a case of opportunistic bad faith and disrupts the Complainant’s business. It also constitutes abusive threat.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns trademark registrations for BAYER. The Panel is satisfied that the Complainant has established its ownership of the trademark BAYER.

The disputed domain name incorporates the Complainant's trademark BAYER in its entirety. BAYER is a well-known trademark. It is established that the incorporation of a well-known trademark is sufficient to establish confusing similarity. The generic Top-Level Domain ("gTLD") ".com" should typically be ignored when assessing confusing similarity as established by prior UDRP decisions. The use of the word "agro" and the letters "lp" do not eliminate confusing similarity as the Complainant's trademark remains recognizable.

Consequently, the Panel finds that the disputed domain name is identical to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not authorized by the Complainant to use its trademark. The Complainant further asserts that the Respondent is not using the disputed domain name for a *bona fide* offering of goods or services, and the Respondent is not commonly known by the disputed domain name. Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links capitalize on the reputation and good will of the complainant's mark. The PPC links seem to resolve to websites which offer products such as pesticides and other agricultural products. Bearing in mind that the Complainant is active in the field of agricultural products, it is the Panel's view that the Respondent is trying to capitalize on the reputation and good will of the Complainant's mark. In *Legacy Health System v. Nijat Hassanov*, WIPO Case No. [D2008-1708](#), it was found that the Respondent had no rights or legitimate interests as "the sole purpose of the disputed domain name is to resolve to pay-per-click advertising websites and collect click-through revenue from advertising links. Such use demonstrates that the Respondent has used the disputed domain name to derive a commercial benefit. There is no indication on the website that the Respondent has made a *bona fide* use of the disputed domain name".

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Respondent has not provided any evidence to show that it has any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent must have been aware of the Complainant's trademark as BAYER is a well-known trademark. The disputed domain name resolves to a parked page with sponsored links. Such use here constitutes bad faith. In *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#) the Panel found that "while the intention to earn click-through-revenue is not in itself illegitimate, the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use." The use of the term "agro" reinforces the impression that the website at the disputed domain name is the Complainant's website as the Complainant is active in the field of agricultural products.

Such conduct of using a domain name, to attract Internet users for commercial gain, would fall squarely within the meaning of paragraph 4(b)(iv) of the Policy. Given the above, the Panel believes that the

Respondent has registered the disputed domain name in order to trade off the reputation of the Complainant's trademark. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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 <agro-bayerpl.com> be transferred to the Complainant.

/Nayiri Boghossian/

Nayiri Boghossian

Sole Panelist

Date: April 1, 2022