

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Privacy Service Provided by Withheld for Privacy ehf / Williams Parker; Andrew Evera; Mukib Mukib
Case No. D2022-1693

1. The Parties

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

The Respondents are Privacy Service Provided by Withheld for Privacy ehf, Iceland / Williams Parker, Canada; Andrew Evera, Canada; Mukib Mukib, Chile.

2. The Domain Names and Registrar

The disputed domain names <agro-bayer-pl.careers>, <agrobayerpl.com>, and <agro-plbayer.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 May 10, 2022. On May 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 10, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 25, 2022, providing the registrant and contact information disclosed by the Registrar, and requesting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 30, 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 Respondents of the Complaint, and the proceedings commenced on June 10, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 30, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on July 1, 2022.

The Center appointed Edoardo Fano as the sole panelist in this matter on July 5, 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.

The Panel has not received any requests from the Complainant or the Respondents regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center (and noting the above-mentioned informal response), the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), “to employ reasonably available means calculated to achieve actual notice to the Respondent”. Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondents.

The language of the proceeding is English, being the language of the Registration Agreements, as per paragraph 11(a) of the Rules.

4. Factual Background

The Complainant is Bayer AG, a German company operating in the healthcare, nutrition, and plant protection fields, owning several trademark registrations for BAYER, including the following:

- International Trademark Registration No. 1462909 for BAYER, registered on November 28, 2018;
- International Trademark Registration No. 1476082 for BAYER, registered on December 10, 2018.

The Complainant operates on the Internet with several domain names including the trademark BAYER, among which <bayer.com>, <bayer.us>, <bayer.com.pl>, and in some countries, like Poland, is using the word “agro” within the website address, *i.e.*, “www.agro.bayer.com.pl”.

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain names were registered on the following dates: <agro-bayer-pl.careers> on October 19, 2021, <agro-plbayer.com> on January 31, 2022, and <agrobayerpl.com> on March 4, 2022. The disputed domain names <agro-bayer-pl.careers> and <agro-plbayer.com> both resolve to the same parking page with pay-per-click (“PPC”) links, some of them redirecting to the Complainant’s competitors, while the disputed domain name <agrobayerpl.com> is not active. The Complainant was able to provide evidence that the disputed domain name <agro-plbayer.com> had been used to send a fraudulent email, from an email address associated with the disputed domain name (*i.e.*, “[...]@agro-plbayer.com”), aimed to carry out a phishing attack.

5. Parties’ Contentions

A. Complainant

The Complainant states that the disputed domain names are confusingly similar to its trademark BAYER, as the disputed domain names fully incorporate the Complainant’s trademark, with the addition of the generic terms “agro” and “pl”.

Further to section 6.1 below, the Complainant argues that the disputed domain names are under common control and thus addresses the Respondents in the singular. The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names since it has not been authorized by the Complainant to register the disputed domain names or to use its trademark within the disputed domain names and it is not making either a *bona fide* offering of goods or services or a legitimate

noncommercial or fair use of the disputed domain names: two of the disputed domain names are resolving to a parking website with several links to the Complainant's competitors, while the third one is inactive.

The Complainant submits that the Respondent has registered the disputed domain names in bad faith, since the Complainant's trademark BAYER is distinctive and well-known in the healthcare, nutrition, and plant protection fields. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain names and the Complainant contends that the use of the disputed domain names <agro-bayer-pl.careers> and <agro-plbayer.com> with the purpose to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's trademark as to an affiliation between the Respondent and the Complainant, qualifies as bad faith registration and use. As regards the disputed domain name <agrobayerpl.com>, not resolving to an active website, the Complainant contends that the passive holding of the disputed domain name qualifies as bad faith registration and use.

B. Respondent

The Respondents have made no reply to the Complainant's contentions and are in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn (see, e.g., *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No. [D2000-0441](#); *Microsoft Corporation v. Freak Films Oy*, WIPO Case No. [D2003-0109](#); *SSL International PLC v. Mark Freeman*, WIPO Case No. [D2000-1080](#); *Altavista Company v. Grandtotal Finances Limited et. al.*, WIPO Case No. [D2000-0848](#); and *Confédération Nationale du Crédit Mutuel, Caisse Fédérale du Crédit Mutuel Nord Europe v. Marketing Total S.A.*, WIPO Case No. [D2007-0288](#)).

6. Discussion and Findings

6.1 Consolidation of Multiple Respondents

The Complainant has requested consolidation of multiple respondents and stated that the disputed domain names belong to the same person or organization. No objection to this request was made by the Respondents.

Pursuant to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") section 4.11.2, "[w]here a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario". The Panel may consider a range of factors to determine whether consolidation is appropriate, such as examining relevant registrant contact information, and any naming patterns in the disputed domain names, or other evidence of respondent affiliation that indicate common control of the disputed domain names.

The Panel notes that the disputed domain names follow the same naming pattern, are all registered with the same Registrar, and two of them are resolving to the same website, in which there are links to the Complainant's competitors. Further, the Panel takes note that the courier service was unable to deliver the Center's written communication to the Respondents, reinforcing the Complainant's claim that the provided contact information is likely false. The Panel finds that there is evidence that the disputed domain names are subject to common control, and that it would be procedurally efficient, fair, and equitable to all Parties to accept the Complainant's consolidation request. The Panel further notes that the Respondents did not object to the consolidation request. The Panel therefore accepts the Complainant's consolidation request. Hereinafter, the Panel will refer to the Respondents in the singular, *i.e.*, "the Respondent".

6.2 Substantive Issues

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 is the owner of the trademark BAYER both by registration and acquired reputation and that the disputed domain names are confusingly similar to the trademark BAYER.

Regarding the addition of the terms “agro”, “pl”, and the hyphens, the Panel notes that it is now well established that the addition of terms or letters to a domain name does not prevent a finding of confusing similarity between the disputed domain name and the trademark (see, e.g., *Aventis Pharma SA., Aventis Pharma Deutschland GmbH v. Jonathan Valicenti*, WIPO Case No. [D2005-0037](#); *Red Bull GmbH v. Chai Larbthanasub*, WIPO Case No. [D2003-0709](#); *America Online, Inc. v. Dolphin@Heart*, WIPO Case No. [D2000-0713](#)). The addition of the terms “agro”, “pl” and the hyphens does not therefore prevent the disputed domain names from being confusingly similar to the Complainant’s trademark. See [WIPO Overview 3.0](#), section 1.8.

It is also well accepted that a generic Top-Level Domain (“gTLD”), in this case “.com” and “.careers”, is typically ignored when assessing the similarity between a trademark and a domain name. See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain names are confusingly similar to the Complainant’s trademark, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Respondent has failed to file a response in accordance with the Rules, paragraph 5.

The Complainant in its Complaint, and as set out above, has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names. It asserts that the Respondent, who is not currently associated with the Complainant in any way, is not using the disputed domain names for a legitimate noncommercial or fair use or in connection with a *bona fide* offering of goods or services, but instead the the disputed domain name <agrobayerpl.com> is not active, while the disputed domain names <agro-bayer-pl.careers> and <agro-plbayer.com> resolve to the same parking page with PPC links, some of them redirecting to the Complainant’s competitors, and the disputed domain name <agro-plbayer.com> has been used for phishing activities.

According to the [WIPO Overview 3.0](#), section 2.13:

“2.13.1 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 [...].”

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain names. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the

disputed domain names, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

Moreover, the Panel finds that the composition of the disputed domain names carries a risk of implied affiliation as they effectively impersonate or suggest sponsorship or endorsement by the Complainant (see [WIPO Overview 3.0.](#), section 2.5.1).

Based on the facts of this case, the Panel finds that paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that “for the purposes of paragraph 4(a)(iii) of the Policy, 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:

(i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or

(ii) that [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) that [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) that 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”.

Regarding the registration in bad faith of the disputed domain names, the reputation of the Complainant’s trademark BAYER in the healthcare, nutrition, and plant protection fields is clearly established and given the composition of the disputed domain names the Panel finds that the Respondent obviously knew of the Complainant and deliberately registered the disputed domain names.

The Panel further notes that the disputed domain names <agro-bayer-pl.careers> and <agro-plbayer.com> are also used in bad faith since on the relevant website there are PPC links, even in the case where they are automatically generated, mainly referring to the same fields of activity as the Complainant, several of them redirecting to the Complainant’s competitors, and the Respondent is therefore knowingly taking advantage from user confusion.

The above suggests to the Panel that the Respondent intentionally registered and is using the disputed domain names <agro-bayer-pl.careers> and <agro-plbayer.com> in order to attract, for commercial gain, Internet users to its website in accordance with paragraph 4(b)(iv) of the Policy.

As regards the use in bad faith of the disputed domain name <agrobayerpl.com>, pointing to an inactive website, the Panel considers that bad faith may exist even in cases of so-called “passive holding”, as found in the landmark UDRP decision *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the circumstances of this case, the Panel finds that such passive holding amounts to bad faith.

Furthermore, the Panel considers that the nature of the disputed domain names, which are almost identical to the Complainant’s trademark with the mere addition of the terms “agro”, “pl”, and the hyphens, further

supports a finding of bad faith and intent to confuse users about a non-existent affiliation trading off of the Complainant's reputation and goodwill. Similarly, the Panel takes note of the Complainant's use of the website "www.agro.bayer.com.pl", reinforcing the Panel's finding that the Respondent sought to target the Complainant and confused Internet users seeking the Complainant. See, [WIPO Overview 3.0](#), section 3.2.1.

Finally, the fact that disputed domain name <agro-plbayer.com> had been used as part of a phishing scheme, as evidenced by the Complainant by producing an email communication sent by the Respondent pretending to be the Complainant's Polish subsidiary, reinforces the Panel's opinion about the Respondent's registration and use of that disputed domain name in bad faith.

The Panel therefore finds that paragraph 4(a)(iii) of the Policy has been 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 names <agro-bayer-pl.careers>, <agrobayerpl.com>, and <agro-plbayer.com>, be transferred to the Complainant.

/Edoardo Fano/

Edoardo Fano

Sole Panelist

Date: July 12, 2022