

ADMINISTRATIVE PANEL DECISION

BASF SE v. Workingmakaylawoodson91 Lawoodson
Case No. D2022-4224

1. The Parties

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

The Respondent is Workingmakaylawoodson91 Lawoodson, Cameroon.

2. The Domain Name and Registrar

The disputed domain name <basf-holding-gmbh.com> (the “Domain Name”) is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 9, 2022, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 November 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 9, 2022.

The Center appointed Gregor Vos as the sole panelist in this matter on January 17, 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

The Complainant is the largest chemical company in the world and is active in more than 80 countries through its subsidiaries. The Complainant services customers in over 200 countries and employs more than 112,000 people worldwide.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter jointly referred to as the "Trademarks"):

- International trademark registration No. 638794 for BASF registered on May 3, 1995, with designation of *inter alia* the Benelux, China, and France; and
- International trademark registration No. 909293 for BASF registered on October 31, 2006, with designation of *inter alia* the Benelux, China, and France.

Further, it is undisputed that the Complainant operates *inter alia* the domain names <basf.com>, <basf.asia>, and <basf.org>.

The Domain Name was registered on June 28, 2022, and currently resolves to an inactive webpage. According to the evidence brought by the Complainant, the Domain Name used to resolve to an active website impersonating the Complainant and offering chemical products for sale.

5. Parties' Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Name is transferred to the Complainant. The Complaint is based on the following factual and legal grounds: the Domain Name is identical or confusingly similar to the Complainant's Trademarks, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainant, the Domain Name is confusingly similar to its Trademarks. The Domain Name reproduces the Trademarks identically with the mere addition of the generic, descriptive terms "holding" and "gmbh", that refer to the statutory form of a legal company, and the generic Top-Level Domain ("gTLD") ".com", which does not prevent confusing similarity.

Secondly, according to the Complainant, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received permission from the Complainant to use the Trademarks and is not sponsored by or affiliated with the Complainant in any way. Also, the Respondent has acquired no trademark or service mark related to the sign BASF. Further, the Respondent is using the Domain Name to impersonate the Complainant. Such use does not constitute a *bona fide* offering of goods or services by the Respondent.

Finally, according to the Complainant, the Respondent has registered and is using the Domain Name in bad faith. In light of the well-known character and the online presence of the Complainant's Trademarks, it is inconceivable that the Respondent registered the Domain Name without knowledge of the Complainant and its Trademarks. Also, according to the Complainant, the Domain Name is being used in bad faith. The Respondent would prevent the Complainant from reflecting its Trademarks in a domain name. Finally, the Respondent creates a likelihood of confusion with the Complainant and its Trademarks by impersonating the Complainant, which demonstrates that the Respondent is using the Domain Name in bad faith.

B. Respondent

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

6. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a), and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- iii. the Domain Name has been registered and is being used in bad faith.

Only if all three elements have been fulfilled is the Panel able to grant the remedy requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Name is (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Name with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Trademarks and the Domain Name (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Name. The addition of the terms "holding" and "gmbh", the separating hyphens, and the gTLD ".com" does not prevent a finding of confusing similarity with the Trademarks (see sections 1.8 and 1.11.1 of the [WIPO Overview 3.0](#) and *Andrey Ternovskiy dba Chatroulette v. On behalf of chatroulette.com OWNER, c/o whoisproxy.com / Domain Admin, High Tech Investments LTD*, WIPO Case No. [D2019-0649](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name. The *onus* of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g., section 2.1 of the [WIPO Overview 3.0](#); *Sanofi v. Cimpress Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in the disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present and is unable to consider any other plausible rights or legitimate interests the Respondent may have in these circumstances.

Moreover, the nature of the Domain Name, incorporating the Complainant's well-known trademark with an indication of business forms, carries a risk of implied affiliation and cannot constitute fair use as it effectively impersonates or suggests sponsorship or endorsement by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)). Such a risk seems to have been the intent of the Respondent, seeing as the Domain Name was previously used to host a website impersonating the Complainant, which can never confer rights or legitimate interests upon the Respondent (see section 2.13 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The well-known character of the Trademarks has been confirmed by earlier panels (see *e.g.*, *BASF SE v. jing liu/liujing*, WIPO Case No. [D2014-1889](#); *BASF SE v. kou xiansheng, bashifurunhuayouwuxiyouxiangongsi*, WIPO Case No. [D2015-2245](#)). The Complainant's rights to the Trademarks further predate the registration date of the Domain Name. In light of the well-known character of the Trademarks, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business. This is reinforced by the fact that at the time of filing the Complaint, the Domain Name resolved to a website offering similar services to those of the Complainant. In combination with the reputation of the Trademarks that are incorporated in their entirety in the Domain Name, this suggests that the Domain Name was registered in recognition of the similarity between the Domain Name and the Complainant's Trademarks, in an attempt of the Respondent to attract, for commercial gain, Internet users to its website by creating a confusion with the Complainant's Trademarks.

Further, even if the current inactive page is taken into account, it is generally accepted by UDRP panels that the non-use of a domain name does not prevent a finding of bad faith (section 3.3 of the [WIPO Overview 3.0](#)). In light of the well-known character of the Trademarks, the lack of any rights or legitimate interest in the Domain Name by the Respondent, and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademarks.

With regard to use of the Domain Name in bad faith, the Panel finds that the use of the Trademarks in the Domain Name in combination with the indication of business forms signals an intention on the part of the Respondent to confuse Internet users into thinking that the Domain Name is connected to the Complainants (section 3.2.1, [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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 Domain Name <basf-holding-gmbh.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: February 3, 2023