

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf / Z Admin, Zadmininc
Case No. D2022-4277

1. The Parties

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

The Respondent is Z Admin, Zadmininc, United States of America.

2. The Domain Name and Registrar

The disputed domain name <bayerr.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 November 10, 2022. On November 10, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 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 (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 11, 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 November 12, 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 November 16, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 7, 2022.

The Center appointed Eva Fiammenghi as the sole panelist in this matter on December 15, 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 one of the world's leading chemical and health care companies, which has its headquarters in Leverkusen, Germany.

The Complainant is the owner of about 700 registrations and pending applications of the wordmark "BAYER". Amongst others:

- International trademark Registration "BAYER" No. 1462909 registered on November 28, 2018 for the following goods/services 1, 3, 5, 9, 10, 31, 35, 41, 42, and 44
- International trademark Registration "BAYER" No. 1476082 registered on December 10, 2018 for the following goods/services 7, 8, 11, 16, 20, 24, 25, 28, 30, 32, 37, 38, 39, 40, 43, and 45
- Bahamas trademark Registration "BAYER" No. 168 registered on May 19, 1919
- Bahamas trademark Registration "BAYER" No. 248 registered on September 2, 1920

Moreover, the Complainant has also established a strong presence on the Internet, in particular it is the owner, among others, of the following domain names reflecting its trademark: <bayer.com>, <bayer.co.nz>, <bayer.com.au>, and <bayer.us>.

The disputed domain name was registered on August 23, 2022 and at the time of filing directed to a parking page displaying links directly targeting the Complainant's field of activity and its trademark; it has been used for an alleged fraud, described below. At the time of this decision, the domain name is inactive.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is almost identical to the Complainant's trademark BAYER which has become a distinctive identifier of its service offerings.

The Complainant argues that the only element of difference between the disputed domain name and the Complainant's trademark is only the double letter "r" in the disputed domain name. This element can mislead Internet users, due to the fact that the disputed domain name is nearly identical to the Complainant's trademark.

In addition, the Complainant alleges that the Respondent has been using an email address connected to the disputed domain name to contact Complainant's wholesaler.

The Complainant has been informed by a pharmaceutical wholesaler from Bahamas, with whom the Complainant cooperates, of a fraud attempt against him. In fact, the wholesaler received a forged invoice issued in the name of the Complainant's subsidiary Bayer S.A., in which has been reproduced also the logo of the famous Bayer Cross.

The invoice has been sent from the email address: [...]@bayerr.com and the sender's name is: "Danielle Santos" and in the email she claimed to be the "Contract partner of Bayer AG" acting "On behalf of Bayer S.A.". The evidences show in the email address, in the signature of the email and the 10 links to the privacy policy, refer to the Complainant's main domain "bayer.com".

The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name to advance legitimate interests. The Complainant has never licensed or otherwise permitted the Respondent to use its trademark or to register any domain name including its trademark.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

A. Identical or Confusingly Similar

In the present case, the disputed domain name is similar to the Complainant's registered well-known trademark BAYER.

The disputed domain name incorporates the BAYER trademark in its entirety, to which the letter "r" has been added.

It is further understood that when a disputed domain name fully incorporates a complainant's registered mark, it is indicative of the disputed domain name being identical or confusingly similar.

The addition of the last letter "r" to the Complainant's trademark, does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. See *Skyscanner Limited v. Domain Admin, Whois Privacy Corp*, WIPO Case No. [D2019-2881](#).

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to the Complainant's mark.

Therefore, the Panel finds the first element of the Policy has been met.

B. Rights or Legitimate Interests

According to the Policy, paragraph 4(a)(ii), the Complainant has to demonstrate that the Respondent has no rights or legitimate interests in the disputed domain name.

There is nothing in the available case file to suggest that the Respondent is in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use its trademarks, or to

seek registration of any domain name incorporating its trademarks.

The Respondent has not made any submissions or any demonstrations that it has rights or legitimate interests in the disputed domain name.

In *Guerlain S.A. v. Peikang*, WIPO Case No. [D2000-0055](#), the panel stated that: “in the absence of any license or permission from the Complainant to use any of its trademarks or to apply for or use any domain name incorporating those trademarks, it is clear that no actual or contemplated bona fide or legitimate use of the domain name could be claimed by Respondent.”

The Panel finds no evidence that the Respondent has used, or undertaken any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering goods or services.

Likewise, no evidence has been adduced that the Respondent has been commonly known by the disputed domain name; nor, for the reasons mentioned above, is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Panel concludes, noting that the Respondent lacks any rights or legitimate interests in the disputed domain name, that the second element of the Policy has, therefore, been met.

C. Registered and Used in Bad Faith

The Complainant contends that the Respondent’s registration and use of the disputed domain name is in bad faith, which the Respondent did not rebut.

On the evidence adduced, it is inconceivable that the registrant of the disputed domain name was unaware of the Complainant’s name, trademark, reputation and goodwill when the disputed domain name was registered.

In *The Nasdaq Stock Market, Inc., v. Hamid Reza Mohammad Pouran*, WIPO Case No. [D2002-0770](#), the panel held: “The Respondent knew or should have known of the existence of the Complainant, [as] the Complainant’s trademark [was] widely publicized globally and constantly featured throughout the Internet, and thus the Panel decides that the disputed domain names were registered in bad faith”.

The Respondent, by using the disputed domain name, is intentionally misleading the consumers and confusing them trying to attract them to other websites making them believe that the websites behind those links are associated with or recommended by the Complainant.

The disputed domain name has not only been used to divert Internet users to other sites offering services that compete with those of the Complainant, but to perpetuate a fraud.

The evidence of a forged invoice sent to a Bayer’s Wholesaler as well as the evidence shown in the email address, in the signature of the email, and the 10 links to the privacy policy, referring to the Complainant’s main domain “bayer.com” demonstrate a clear intent of the Respondent to attract Internet users, for commercial gain, by creating a likelihood of confusion with the Complainant’s trademarks and domain names (Policy, paragraph 4(b)(iii)).

Accordingly, pursuant to paragraph 4(b) of the Policy, this Panel finds that disputed domain name was registered and has been used in bad faith by the Respondent.

On this basis the Panel finds that the Complainant has satisfied the third element of the Policy, paragraph 4(a)(iii).

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, <bayerr.com> be transferred to the Complainant.

/Eva Fiammenghi/

Eva Fiammenghi

Sole Panelist

Date: December 29, 2022