

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Mary Aurelien

Case No. D2022-4638

1. The Parties

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

Respondent is Mary Aurelien, Poland.

2. The Domain Name and Registrar

The disputed domain name <bayerpl.online> (the “Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 3, 2022. On December 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On December 5, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 Complainant on December 8, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on December 13, 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 Respondent of the Complaint, and the proceedings commenced on December 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 9, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 12, 2023.

The Center appointed Harrie R. Samaras as the sole panelist in this matter on February 9, 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

Complainant does business internationally in the fields of healthcare, nutrition and plant protection. It is represented by over 374 consolidated companies in 83 countries and has more than 99,000 employees worldwide.

The company name BAYER dates back to 1863, when the firm of “Friedrich Bayer & Co.” was established in the town of Elberfeld, now part of the city of Wuppertal in Germany. In 1881, the name was transferred to a stock corporation called “Farbenfabriken vorm. Friedrich Bayer & Co.”. This company began manufacturing and marketing pharmaceutical products in 1888, and has sold such products under the BAYER trademark ever since that time. Complainant owns about 700 registrations and pending applications for the word mark “BAYER” alone, including International Trademark Registration Nos. 1462909 (registered November 28, 2018) and 1476082 for “BAYER” (registered December 10, 2018) (the “BAYER Mark” or the “Mark”).

Furthermore, Complainant and its subsidiaries own hundreds of domain name registrations containing the BAYER Mark, including <cropscience.bayer.com>, <bayer.com>, <bayer.co.nz>, <bayer.com.au>, <bayer.co>, <bayer.com.pl>, and <bayer.us>.

Respondent registered the Domain Name on March 26, 2022. It was being used in connection with a website with the notice: “bayerpl.online | Website Enabled | domain owner may login to the control panel to manage this website”. Now the notice states: “baffme.com | Website Disabled | Eating Up Resources.”

5. Parties’ Contentions

A. Complainant

As a result of the exclusive and extensive use, Complainant’s BAYER Marks have acquired significant goodwill and are widely known. The Domain Name fully incorporates the well-known BAYER Marks and is confusingly similar to the Mark. The specific top-level domain name is generally not an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between a complainant’s trademark and the disputed domain name. Adding “pl” is merely generic and not suitable to eliminate the similarity between the Mark and Domain Name. Using the BAYER Mark in combination with “pl” will confuse Internet users as it is referring directly to Complainant’s subsidiaries’ website at <bayer.com.pl>.

The BAYER Mark is well-known and connected with Complainant and its products. “Bayer” is not a word any market participant or other domain registrant would legitimately choose unless seeking to create an impression of an association with Complainant. Complainant has not licensed or otherwise permitted Respondent to use any of its trademarks and has not permitted Respondent to apply for or use any domain name incorporating the BAYER Mark. Furthermore, there is no evidence of Respondent’s use of, or demonstrable preparations to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services within the meaning of the Policy. And there is no evidence which suggests that Respondent is making a legitimate noncommercial or fair use of the Domain Name or is commonly known by the Domain Name or the name “Bayerpl”.

“BAYER” is obviously not a word a domain name registrant would legitimately choose unless seeking to create an impression of an association with Complainant. In addition, based on Complainant’s international profile and the fact that the Domain Name clearly refers to Complainant’s Polish subsidiary, it is inconceivable that Respondent registered the Domain Name unaware of Complainant and its rights in its

highly distinctive and well-known BAYER Mark. Finally, Respondent has already been involved in numerous proceedings concerning the BAYER Mark before the Domain Name was registered.

Respondent's registration of the Domain Name prevents Complainant from reflecting its trademarks in a corresponding domain name and Respondent has engaged in a pattern of such conduct, as set out in the Policy. In addition, Complainant believes that the Domain Name is involved in a series of frauds, that Complainant is currently facing, and is therefore used in bad faith. Even if Respondent has not actively used but merely passively held the Domain Name and is not acting as part of the above-mentioned fraud complex so far, this would not preclude a finding of bad faith use under the Policy as well as, in the present case, such passive holding of the Domain Name is equal to active use because: The Mark is highly distinctive and well-known; Respondent had provided no evidence whatsoever of any actual or contemplated good faith use; the Domain Name refers to Complainant's Polish subsidiary; and from all of the circumstances, there does not appear to be any possible or conceivable good faith use of the Domain Name that would not be illegitimate. Further evidence of bad faith use is that Respondent's use of the Domain Name may disrupt Complainant's business and it is capable of reducing the number of visitors to Complainant's website, thus adversely affecting Complainant's business. The registration of the Domain Name also constitutes an abusive threat hanging over the head of Complainant.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is uncontroverted that Complainant has established rights in the BAYER Mark based on the aforementioned trademark registrations for it.

Furthermore, the Domain Name is confusingly similar to the BAYER Mark because it incorporates that Mark in its entirety and adds the designation "pl", which does not prevent a finding of confusingly similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is well settled that the addition of the generic Top-Level Domain, here ".online", is not significant in determining whether a domain name is identical or confusingly similar to a trademark. *CBS Broadcasting Inc. v. Worldwide Webs, Inc.*, WIPO Case No. [D2000-0834](#).

For the foregoing reasons, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Complainant argues that: (1) the BAYER Mark is well-known and connected with Complainant and its products; (2) "Bayer" is not a word any market participant or other domain registrant would legitimately choose unless seeking to create an impression of an association with Complainant; (3) it has not licensed or otherwise permitted Respondent to use any of its trademarks and has not permitted Respondent to apply for or use any domain name incorporating the BAYER Mark; (4) there is no evidence of Respondent's use of, or demonstrable preparations to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services within the meaning of the Policy; and (5) there is no evidence which suggests that Respondent is making a legitimate noncommercial or fair use of the Domain Name or is commonly known by the Domain Name or the name "bayerpl".

Where, as here, Complainant has raised a *prima facie* presumption of Respondent's lack of any rights or legitimate interests in the Domain Name, and Respondent has failed to rebut that presumption, the Panel is

satisfied that Complainant has carried its burden of proving that Respondent has no rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Respondent registered the Domain Name on March 26, 2022, many years after Complainant began using the Mark and obtained the aforementioned trademark registrations for it. It is further undisputed: (1) the company name Bayer dates back to the 1800's and Complainant has been making and marketing pharmaceutical products since the late 1800's and has sold such products under the BAYER Mark ever since that time; (2) Complainant does business internationally in the fields of healthcare, nutrition and plant protection, represented by over 374 consolidated companies in 83 countries employing more than 99,000 people worldwide; (3) Complainant and its subsidiaries own hundreds of domain name registrations containing the BAYER Mark, including <bayer.com.pl>; and (4) Respondent adopted the Mark in its entirety and added on a geographical designation for Poland – "pl" – where Complainant does business (<bayerpl.online>) to create a domain name that is similar to one of Complainant's registered domain names <bayer.com.pl>. Given this undisputed evidence, the Panel finds it is more likely than not Respondent was aware of Complainant and the BAYER Mark when it registered the Domain Name. Respondent's bad faith registration is also evidenced by the facts that the Domain Name: (1) is confusingly similar to the Mark; and (2) Respondent has no rights or legitimate interest in the Domain Name.

Respondent has also been using the Domain Name in bad faith. When the Complaint was filed in this case, the Domain Name was being used in connection with a website with the notice: "bayerpl.online | Website Enabled | domain owner may login to the control panel to manage this website". Now the notice states: "baffme.com | Website Disabled | Eating Up Resources." "Parking" a domain name, as Respondent has done here, can constitute bad faith use. See, e.g., *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) ("passive holding" of the domain name could constitute use of the domain name in bad faith). The Panel has already found that Respondent incorporated in the Domain Name Complainant's registered BAYER Mark (which was in use for many years before the Domain Name was registered) for which Respondent lacks any rights or legitimate interests. Respondent has parked the Domain Name without using it and without submitting any evidence of any good faith use of or intention to use it. In use, the Domain Name, incorporating Complainant's well-known BAYER Mark, will inevitably lead to confusion or disruption of Complainant's business. For all of the aforementioned reasons, "it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use the domain name". See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

For the foregoing reasons, the Panel finds that Complainant has satisfied the third element 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 Domain Name <bayerpl.online> be transferred to Complainant.

/Harrie R. Samaras/

Harrie R. Samaras

Sole Panelist

Date: February 21, 2023