

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Benz Billion, and Andrew Evera
Case No. D2022-4816

1. The Parties

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

The Respondents are Benz Billion, Malaysia, and Andrew Evera, Canada.

2. The Domain Names and Registrar

The disputed domain names <bayer-cz.international>, <czbayer-cz.com> and <czbayer.icu> are registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 13, 2022. On December 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 16 and 19, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 20, 2022, providing the registrant and contact information for multiple underlying registrants disclosed by the Registrars, and inviting the Complainant to either amend the Complaint adding the Registrar-disclosed registrants as formal Respondents and provide relevant arguments or evidence demonstrating that all named Respondents are, in fact, the same entity and/or that all disputed domain names are under common control; and/or, to file a separate complaint for any disputed domain name for which it is not possible to demonstrate that all named Respondents are in fact the same entity and/or that all disputed domain names are under common control and indicate which disputed domain name will no longer be included in the current Complaint. The Complainant filed an amended Complaint on December 23, 2022, including arguments for consolidation.

The Center verified that the Complaint together with 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 January 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 30, 2023.

The Center appointed Luca Barbero as the sole panelist in this matter on February 6, 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 a global enterprise active in the fields of healthcare, nutrition and plant protection. The Complainant's stocks are included in nearly all the major share indices, traded on all German stock exchanges and included in the DAX 40, a Blue-Chip stock market index consisting of the 40 major German companies trading on the Frankfurt Stock Exchange.

The Complainant is represented by 374 consolidated companies in 83 countries, has more than 99,000 employees worldwide and has been selling its products on the Czechoslovak market since 1884. In 1990, an independent representative office was established under the name BAYER s. r.o.

The Complainant is the owner of over 700 trademark registrations for BAYER including the following, as per trademark registration details submitted as annex 7 to the Complaint:

- International Trademark registration No. 1462909 for BAYER (word mark), registered on November 28, 2018, in international classes 01, 03, 05, 09, 10, 31, 35, 41, 42 and 44;
- International Trademark registration No. 1476082 for BAYER (word mark), registered on December 10, 2018, in international classes 07, 08, 11, 16, 20, 24, 25, 28, 30, 32, 37, 38, 39, 40, 43 and 45.

The Complainant is also the owner of numerous domain names incorporating BAYER trademark, including <bayer.com>, registered on January 25, 1996, and <bayer.cz> registered on December 08, 2006, both used by the Complainant to promote its products under the trademark BAYER.

The disputed domain name <bayer-cz.international> (the "first disputed domain name"), registered on November 06, 2022, is currently pointed to a webpage indicating that the website has been disabled. The disputed domain name <czbayer-cz.com> (the "second disputed domain name"), registered on October 27, 2022, and <czbayer.icu> (the "third disputed domain name"), registered on September 25, 2022, are pointed to parking pages with sponsored listings in the case of <czbayer.icu>.

According to the evidence submitted by the Complainant as annexes 11 and 12 to the Complaint, which has not been challenged by the Respondents, the second disputed domain name was used for the creation of an email address using the terms "hr" and "careers" ([...]@czbayer-cz.com) from which a fraudulent email was sent to a third party in the name of a person claiming to act on behalf of the Complainant's Czech company, who invited recipients to fill in an online form, published on an internal page of the website at "www.bayer-cz.international", where users were requested to provide their personal data and answer some questions to apply for a job position.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names <bayer-cz.international>, <czbayer-cz.com> and <czbayer.icu> are all confusingly similar to the trademark BAYER in which the Complainant has rights as

they all reproduce the trademark in its entirety with the mere addition of the geographical term “cz” (which would correspond to the two-letter country abbreviation for Czech Republic) and the generic Top-Level Domains (“gTLDs”) “.international”, “.com” and “.icu”, which are not sufficient to exclude confusing similarity.

With reference to rights or legitimate interests in respect of the disputed domain names, the Complainant states that it has in no way licensed or otherwise permitted the Respondents to use any of its trademarks, nor has it ever permitted the Respondents to apply for or use domain names incorporating the trademark BAYER.

The Complainant underlines that there is no evidence of the Respondents’ use of, or demonstrable preparations to use, the disputed domain names or a name corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services, especially considering the Respondents’ use of the disputed domain names in connection with parking websites and to send scam emails.

The Complainant also emphasizes that there is no evidence which suggests that the Respondents are making a legitimate noncommercial or fair use of the disputed domain names or are commonly known by the disputed domain names or names corresponding to the disputed domain names.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondents were well aware of the Complainant and its rights when registering the disputed domain names and acted in opportunistic bad faith since the Complainant and its brand BAYER are highly distinctive and well-known.

The Complainant underlines that “Bayer” R is not a word a registrant would legitimately choose unless seeking to create an impression of an association with the Complainant, especially considering the Complainant’s high profile worldwide and the fact that the Respondents engaged in a series of fraud cases and is deliberately targeting the Complainant.

The Complainant also contends that the Respondents are using one of the three disputed domain names in connection with fraudulent activities, *i.e.* to send fraudulent emails to possible job candidates of the Complainant.

Moreover, the Complainant highlights that, by using two of the three disputed domain names in connection with websites displaying sponsored listings, the Respondents are, in all likelihood, trying to divert traffic intended for the Complainant’s website to their own, for the purpose of earning revenues from Internet users searching for the Complainant’s website, whilst disrupting the Complainant’s business and reducing the number of visitors to the Complainant’s website.

The Complainant further emphasizes that the Respondents’ registration of the disputed domain names clearly prevents the Complainant from reflecting its trademarks in a corresponding domain names and submits that the Respondents have engaged in a pattern of such conduct since they registered three disputed domain names containing the Complainant’s trademark BAYER. The Complainant also informs the Panel that the Respondent Andrew Evera has history of deliberately targeting the Complainant since it has been involved in five UDRP proceedings all of which concerned comparable factual events and ended in the transfer of the disputed domain names, namely *Bayer AG v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Andrew Evera*, WIPO Case No. [D2021-4011](#) (<bayer-pl.careers>), *Bayer AG v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Andrew Evera*, WIPO Case No. [D2022-0514](#) (<agro-bayerpl.com>), *Bayer AG v. Privacy Service Provided by Withheld for Privacy ehf / Andrew Evera*, WIPO Case No. [D2022-0544](#) (<agrobayer-pl.careers>), *Bayer AG v. Privacy Service Provided by Withheld for Privacy ehf / Williams Parker; Andrew Evera; Mukib Mukib*, WIPO Case No. [D2022-1693](#) (<agro-bayer-pl.careers> et al.) and *Bayer AG v. Andrew Evera*, WIPO Case No. [D2022-4008](#) (<bayer-cz.com>).

B. Respondents

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

6. Discussion and Findings

6.1. Consolidation of multiple Respondents.

Paragraph 10(e) of the Rules provides that a panel shall decide a request by a party to consolidate multiple domain name disputes in accordance with the Policy and the Rules.

As stated in section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "Where 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. Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behavior, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s)."

The Complainant asserted that the disputed domain names, although registered in the name of different individuals, are under common control since:

- (i) the disputed domain names all target the Complainant and have the same structure, by combining the famous trademark BAYER with the two-letter country abbreviation for Czech Republic;
- (ii) the disputed domain names have been registered in close chronological order with the same Registrar;
- (iii) the first and second disputed domain names (<czbayer-cz.com> and <bayer-cz.international>) have been demonstrably used together in connection with a single fraud attempt, as a fraudulent email sent from an email address based on <czbayer-cz.com> contained a link to an online interview assessment form published on the website to which <bayer-cz.international> resolved;
- (iv) the registrant information for <bayer-cz.international> is obviously false, as it includes the indication of a Malaysian city in connection with the ZIP code of Winter Haven, Florida, United States.

In view of the above-detailed elements highlighted by the Complainant and considering that the second and third disputed domain names (<czbayer-cz.com> and <czbayer.icu>) share the same registrant information, the Panel finds that, on balance of probabilities, the three disputed domain names are under common control. The Panel also finds that consolidation in this case would be fair and equitable to all parties.

The Panel concludes that the consolidation of the multiple domain names is appropriate in this case and is consistent with the Policy and Rules as well as with prior relevant UDRP decisions in this area (see, amongst others, *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#)).

Therefore, the Panel will now proceed to a decision on the merits of the case.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules: “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain names registered by the Respondents are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) that the disputed domain names have been registered and are being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark BAYER based on the trademark registrations cited under section 4 above and the related trademark registration details submitted as annex 7 to the Complaint.

As highlighted in section 1.7 of the [WIPO Overview 3.0](#), the first element functions primarily as a standing requirement, and the threshold test for confusing similarity typically involves a side-by-side comparison of the disputed domain names and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain names.

Moreover, where the relevant trademark is recognizable within the disputed domain names, the addition of generic or descriptive terms does not prevent a finding of confusing similarity under the first element (section 1.8 of the [WIPO Overview 3.0](#)). Furthermore, the applicable Top Level Domain (“TLD”) in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (section 1.11.1 of the [WIPO Overview 3.0](#)).

In the case at hand, the Panel finds that the disputed domain names are confusingly similar with the Complainant’s trademark as they entirely reproduce the trademark BAYER in combination with other elements, namely the two-letter term “cz” - which can be interpreted as the country code for Czech Republic -, hyphens and the gTLDs “.international”, “.com” and “.icu”.

Therefore, the Panel finds that the Complainant has proven that the disputed domain names are confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

It is well established that the burden of proof lies on the complainant. However, satisfying the burden of proving a lack of the respondent’s rights or legitimate interests in respect of a domain name according to paragraph 4(a)(ii) of the Policy is potentially onerous, since proving a negative can be difficult considering such information is often primarily within the knowledge or control of the respondent.

Accordingly, in line with previous UDRP decisions, it is sufficient that the Complainant show a *prima facie* case that the Respondents lack rights or legitimate interests in the disputed domain names in order to shift the burden of production on the Respondents. If the Respondents fail to demonstrate rights or legitimate interests in the disputed domain names in accordance with paragraph 4(c) of the Policy or on any other

basis, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In the case at hand, by not submitting a Response, the Respondents have failed to invoke any circumstance that could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain names.

Moreover, it has been repeatedly stated that, when a respondent does not avail himself of its right to respond to a complaint, it can be assumed in appropriate circumstances that the respondent has no rights or legitimate interests in the disputed domain name.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondents and the Complainant. The Respondents are not licensees of the Complainant, nor have the Respondents otherwise obtained an authorization to use the Complainant's trademark.

Furthermore, there is no indication before the Panel that the Respondents are commonly known by the disputed domain names, have made preparations to use the disputed domain names in connection with a *bona fide* offering of goods or services, or that they intend to make a legitimate, noncommercial or fair use of the disputed domain names.

According to the evidence submitted by the Complainant, which has not been contested by the Respondents, the second disputed domain name has been used for the creation of an email address ([...]@czbayer-cz.com) from which a fraudulent email has been sent in the name of a person claiming to act on behalf the Complainant's Czech company Bayer s.r.o.. The email also contained a link to an online interview assessment form with a link to a website at the disputed domain name <bayercz.international>, where the job candidate was asked to submit his personal data.

The Panel finds that the Respondents' use of the disputed domain names <czbayer-cz.com> and <bayer-cz.international> clearly shows the Respondents' intention to pass off as the Complainant to obtain personal information from users interested in working with the Complainant.

As stated in section 2.13.1 of the [WIPO Overview 3.0](#), Panels have categorically held that the use of a domain name for illegal activity, including phishing, impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent.

Moreover, the second and third disputed domain names <czbayer-cz.com> and <czbayer.icu> have been pointed to parking pages with sponsored links in the case of <czbayer.icu> also related to the Complainant's field of activity. As stated in section 2.9 of the [WIPO Overview 3.0](#), "Applying UDRP paragraph 4(c), 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 compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users".

Therefore, the Panel finds that the Complainant has proven that the Respondents have no rights or legitimate interests in the disputed domain names according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain names were registered and are being used by the Respondents in bad faith.

As to bad faith at the time of the registration, the Panel finds that, in light of i) the prior longstanding use of the Complainant's trademark BAYER in connection with the Complainant's products, ii) the well-known character of the trademark and iii) the confusing similarity of the disputed domain names with the Complainant's trademark, the Respondents very likely registered the disputed domain names having the Complainant's trademark in mind.

Moreover, in view of the notoriety of the Complainant's trademark, the Panel finds that the Respondents acted in opportunistic bad faith at the time of registration, since the disputed domain names are so obviously connected with the Complainant that its very selection by the Respondents, which have no connection with the Complainant, suggests the disputed domain names were registered with a deliberate intent to create an impression of an association with the Complainant.

Furthermore, the Respondent Andrew Evera was certainly well aware of the Complainant's trademark as it was involved in five previous cases decided under the Policy prior to the registration of the second and third disputed domain names.

In addition, according to the evidence on records, a communication sent from an email address based on the second disputed domain name <czbayer-cz.com> was used for the sending of a scam email which misused the Complainant's trademark and pretended to be sent on behalf of the Complainant's Czech affiliated company Bayer s.r.o. and the Complainant's trademarks were used also on the linked website at "www.bayer-cz.international". The Panel finds that this is compelling evidence of actual knowledge of the Complainant's trademarks.

As to the use of second disputed domain name <czbayer-cz.com> in connection with the sending of a fraudulent email communication, the Panel notes that, as stated in section 3.4 of the [WIPO Overview 3.0](#), the use of a domain name for purposes other than to host a website, such as the respondent's use of the domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, may constitute bad faith.

As indicated above, the disputed domain name <bayer-cz.international> was previously pointed to a website displaying the Complainant's trademark where internet users were requested to provide their personal information, whilst the second and third disputed domain names <czbayer-cz.com> and <czbayer.icu> are currently pointed to a parking webpage with sponsored links in the case of <czbayer.icu> also related to the Complainant's field of activity and redirecting to third-party websites. In view of such use of the disputed domain names, the Panel finds that the Respondents intentionally attempted to attract Internet users to their websites for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of their websites according to paragraph 4(b)(iv) of the Policy.

The first disputed domain name <bayer-cz.international> does not resolve to an active website at the time of this Decision. However, it is well established that passive holding of a domain name could amount to bad faith under certain circumstances as decided, *i.a.*, in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the case at hand, in view of (i) the degree of distinctiveness and reputation of the Complainant's trademark, (ii) the failure of the Respondents to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the Respondents' concealing their identity and (iv) the implausibility of any good faith use to which the disputed domain names may be put, the Panel finds that the current passive holding of the disputed domain name does not prevent a finding of bad faith use. See section 3.3 of the [WIPO Overview 3.0](#).

In addition, the Panel also finds that the Respondents registered the disputed domain names to prevent the Complainant from reflecting its trademark in corresponding domain names and have clearly engaged in a pattern of conduct as they registered the three disputed domain names as well as at least five additional domain names incorporating the Complainant's trademarks, which were subject of prior UDRP cases (cited under section 5.A above) and were transferred to the Complainant. See section 3.1.2 of the [WIPO Overview 3.0](#): "UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration. This may include a scenario where a respondent, on separate occasions, has registered trademark-abusive domain names, even where directed at the same brand owner."

Therefore, the Panel finds that the Complainant has also proven that the Respondents registered and are using the disputed domain names in bad faith according to 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 names <bayer-cz.international>, <czbayer-cz.com>, and <czbayer.icu> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: February 21, 2023