

ADMINISTRATIVE PANEL DECISION

Bayer AG v. David Le
Case No. D2023-1162

1. The Parties

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

The Respondent is David Le, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <ez-bayer.com> is registered with IONOS SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2023. On March 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, 2023, 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, 1&1 Internet Inc) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 16, 2023, 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 March 21, 2023.

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 March 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 17, 2023.

The Center appointed Marilena Comanescu as the sole panelist in this matter on April 24, 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, Bayer AG, based in Germany and with a history dating back in 1863, is a global enterprise with the core competencies in the fields of healthcare, nutrition and plant protection.

Currently the Complainant is represented by over 374 consolidated companies in 83 countries and has more than 99,000 employees worldwide. The Complainant itself or through its subgroups, does business on all five continents, manufacturing and selling numerous products, *inter alia*, human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals. The Complainant is regularly listed among the world's leading companies in various categories.

The Complainant holds about 700 trademark registrations and applications for the word mark BAYER alone, such as the following:

- United States Trademark Registration No. 73578258 for BAYER, filed on January 17, 1986, and registered on April 5, 1988, covering goods in the International Classes 1 and 5; and
- United States Trademark Registration No. 71134802 for "BAYER", filed on July 12, 1920, and registered on June 6, 1922, covering goods in the International Class 5.

The Complainant and its subsidiaries own hundreds of domain names incorporating the BAYER trademark, such as <bayer.com>, <bayer.cz>, <bayer.com.au>, or <bayer.us>.

The disputed domain name <ez-bayer.com> was registered on September 26, 2006, and, at the time of filing the Complaint, it resolved to a parking page stating: "1&1. This domain name has just been registered for one of our customers!."

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its well-known trademark, company name and domain names; the Respondent has no rights or legitimate interests in the disputed domain name; and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

Based on the information provided by the Registrar in relation to the underlying registrant of the disputed domain name, the Complainant contends and provides evidence in Annex 10 to the Amended Complaint that the Respondent has registered several domain names comprising third parties trademarks or company names, and accordingly, it seems that the Respondent has engaged in a pattern of purposefully registering third parties' trademarks or company names as domain names.

B. Respondent

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

6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the

Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the BAYER trademark.

The disputed domain name incorporates the Complainant's trademark, preceded by two letters, "ez", and a dash.

Numerous UDRP panels have considered that the addition of other terms (whether geographical, descriptive, pejorative, meaningless or otherwise) to trademarks in a domain name does not prevent a finding of confusing similarity, where the relevant trademark is recognizable within the domain name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".info", ".org") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark BAYER, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that it has given no license or other right to use its trademark to the Respondent, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods and services.

In line with the case law, "where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element". See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has put forward a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not replied to the Complainant's contentions and has not come forward with relevant evidence to rebut the Complainant's *prima facie* case. There is nothing in the record suggesting that the Respondent has ever been commonly known by the disputed domain name or that the Respondent has made a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name. In fact, the disputed domain name is used as a landing page and this may constitute passive holding which, along with the other circumstances in this case, does not amount to a *bona fide* or legitimate use.

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds trademark rights since 1922, and owns about 700 trademarks and applications for the word mark BAYER alone and numerous domain names including the BAYER trademark. The BAYER trademark is well known worldwide.

The disputed domain name was registered in September 2006 and incorporates the Complainant's trademark with a non-distinctive term.

For the above, the Panel finds that the disputed domain name was registered in bad faith, with the Respondent's knowledge of the Complainant, and particularly targeting its trademark.

Further, the disputed domain name has been connected to a parking page that may amount to the inactive use.

From the inception of the UDRP, panels have found that the non-use of a domain name (including a blank or "coming soon" or other similar inactive page) would not prevent a finding of bad faith under the doctrine of passive holding. The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be relevant circumstances found to be indicative of bad faith include (i) the degree of distinctiveness or reputation of the complainant's mark; (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good faith use; (iii) the respondent's concealing its identity or use of false contacted details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. See section 3.3 of the [WIPO Overview 3.0](#).

In the present proceeding, (i) the disputed domain name incorporates the Complainant's internationally well-known trademark; (ii) although being properly notified, the Respondent failed to participate in this proceeding and to put forward any argument in its favor; (iii) the Complainant holds trademark registrations which predates at least 80 years prior to the registration of the disputed domain name; and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

The Respondent has not participated in the present proceeding and such fact, together with all the other elements in this case, supports, in the eyes of this Panel, a finding of bad faith behavior.

Furthermore, it was consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar to a third party's famous or widely-known trademark can create by itself a presumption of bad faith for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to 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 <ez-bayer.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: May 8, 2023