

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Andrew Evera
Case No. D2023-1175

1. The Parties

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

Respondent is Andrew Evera, Canada.

2. The Domain Name and Registrar

The disputed domain name <czech-bayer.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 March 16, 2023. On March 16, 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, Privacy service provided by Withheld) and contact information in the Complaint. The Center sent an email communication to Complainant on March 22, 2023 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 March 23, 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 Respondent of the Complaint, and the proceedings commenced on March 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 17, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 1, 2023.

The Center appointed Timothy D. Casey as the sole panelist in this matter on May 16, 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, headquartered in Germany, is represented by over 374 consolidated companies in 83 countries and has more than 99,000 employees worldwide. Complainant has been manufacturing and marketing pharmaceutical products under the BAYER trademark since 1888 and is the owner of about 700 trademark registrations and pending applications for the word mark “BAYER” (the “BAYER Marks”), including the following:

Mark	Jurisdiction	Class(es)	Registration No.	Registration Date
BAYER	International	1, 3, 5, 9, 10, 31, 41, 42, 44	1462909	November 28, 2018
BAYER	International	7, 8, 11, 16, 20, 24, 25, 28, 30, 32, 37, 38, 39, 40, 43, 45	1476082	December 10, 2018

Complainant’s does business on all five continents and manufactures and sells a variety of products, including human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals, and is recognized as one of the world’s leading brands. Complainant also owns hundreds of domain name registrations containing the BAYER Marks, including <bayer.cz>

The disputed domain name was registered January 21, 2023, in the name of Privacy Service provided by Withheld for Privacy ehf.

Complainant provided evidence showing that the disputed domain name was used on March 2, 2023, in association with an email fraudulently offering someone a job offer in Complainant’s name to work for Czech Bayer Crop Science.

5. Parties’ Contentions

A. Complainant

Complainant contends that the disputed domain name fully incorporates the BAYER Marks and is confusingly similar to the BAYER Marks. Complainant contends that the Top-Level Domain (“.com”) of the disputed domain name is not an element of distinctiveness. Complainant further contends that the additional word “czech” refers to the Czech Republic and is therefore merely generic and does nothing to eliminate the similarity between the BAYER Marks and the disputed domain name. Rather, Complainant suggests that the combination of the BAYER Marks with the word “czech” serves to confuse Internet users as it refers to Complainant’s <bayer.cz> domain name.

Complainant contends that Respondent is not licensed or permitted to use the BAYER Marks or to apply for or use a domain name incorporating the BAYER Marks. Complainant contends there is no evidence of Respondent’s use, or preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services. Complainant asserts that Respondent’s use of the disputed domain name in the fraudulent job offer was not *bona fide*. Complainant further contends that there is no evidence that Respondent is making a legitimate non-commercial or fair use of the disputed domain name or is commonly known by the same.

Complainant contends that the BAYER Marks are well-known and so connected to Complainant and its products that a domain registrant would not legitimately choose the BAYER Marks for a domain name unless seeking to create an impression or an association with Complainant. Complainant further contends that based on Complainant’s high profile worldwide and Respondent’s deliberate targeting of Complainant that it is inconceivable that Respondent was unaware of Complainant and the BAYER Marks at the time of registration. Complainant contends that Respondent’s use of the disputed domain name in a fraudulent

activity was use in bad faith. Complainant further contends that Respondent's use of the disputed domain name prevents Complainant from using the BAYER Marks in a corresponding domain name and that Respondent has a pattern of such conduct. Complainant also contends that Respondent's use of the BAYER Marks in the disputed domain name by someone with no connection to Complainant or Complainant's products suggest opportunistic fraud. Finally, Complainant contends that the disputed domain name disrupts Complainant's business, reduces the number of visitors to Complainant's website, may adversely affect Complainant's business, and constitutes an abusive threat hanging over the head of Complainant; all of which supports a finding of bad faith usage.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

A. Identical or Confusingly Similar

Complainant's use of the BAYER Marks for over 100 years and registrations for the same are more than sufficient to establish that Complainant has trademark rights in the BAYER Marks prior to registration of the disputed domain name.

Complainant contends that the disputed domain name is confusingly similar to the BAYER Marks.

Given that Complainant's BAYER Marks are recognizable in the disputed domain name the Panel agrees and finds that the disputed domain name is confusingly similar to the BAYER Marks.

B. Rights or Legitimate Interests

The Panel finds that Respondent has no rights or legitimate interests in the disputed domain name. Respondent does not appear to be commonly known by the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use the BAYER Marks.

Respondent's use of the disputed domain name in an email fraudulently offering someone a job working for Complainant is not a *bona fide* offering of goods or service that would give rise to rights or a legitimate interest in the disputed domain name.

Furthermore, the nature of the disputed domain name, comprising the BAYER Marks and adding the term "czech," which is related to a location of Complainant's business, carries a risk of implied affiliation with Complainant as it effectively impersonates or suggests sponsorship or endorsement by Complainant, and accordingly cannot constitute a fair use in these circumstances. See section 2.5.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)).

Respondent has not rebutted Complainant's *prima facie* case and has provided no arguments or evidence showing potential rights or legitimate interests in the disputed domain name. For these reasons, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Given i) the timing of Complainant's first use of the BAYER Marks in 1888 and the numerous prior registrations of the BAYER Marks, predating registration of the disputed domain name by many years, Complainant being headquartered in Europe, and Complainant's use of the BAYER Marks in association with agricultural chemicals, ii) the misleading nature of the disputed domain name as a combination of the BAYER Marks with the descriptive term "czech", in combination with an email fraudulently offering someone a job at Czech Bayer Crop Science, and iii) the timing of the registration of the disputed domain name and

use of the disputed domain name, indicates that Respondent had clear knowledge of the BAYER Marks and Complainant's business prior to registration.

The Panel finds that Respondent's registration of the disputed domain name was in bad faith.

In addition, the Panel finds Respondent usage of the disputed domain name to deceive someone into thinking they were being offered a job to work for Complainant constitutes use in bad faith consistent with paragraph 4(b)(iv) of the Policy.

The Panel concludes that the disputed domain name was registered and has been used in bad faith.

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 <czech-bayer.com> be transferred to Complainant

/Timothy D. Casey/

Timothy D. Casey

Sole Panelist

Date: May 30, 2023