

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Andrew Evera
Case No. D2023-1312

1. The Parties

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

The Respondent is Andrew Evera, Canada.

2. The Domain Name and Registrar

The disputed domain name <czechbayer.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 30, 2023. On March 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 31, 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 for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 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 April 5, 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 April 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 2, 2023.

The Center appointed Selma Ünlü as the sole panelist in this matter on May 23, 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

Given that no Response was filed, the following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant, Bayer AG, is a global healthcare, nutrition and plant protection company with its headquarters in Germany operating worldwide. It manufactures and markets pharmaceutical products since 1888 under the BAYER name and trademark. Also, the Complainant offers its products in Czech Republic since 1884, where it opened an independent representative office in 1990.

The Complainant is the owner of several hundred trademarks for BAYER. The Complainant's trademarks including the term BAYER are, *inter alia*, the following:

- International trademark "BAYER" No. 1462909, registered on November 28, 2018
- International trademark "BAYER" No. 1476082, registered on December 10, 2018

The Complainant is also the owner of several domain names incorporating its BAYER trademark, such as <bayer.com>, <bayer.co>, <bayer.us> and <bayer.cz>.

The disputed domain name was registered on March 25, 2023. The disputed domain name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant states that it is the owner of the well-known BAYER trademarks, and the business with these trademarks was well established at the time of the registration of the disputed domain name. The disputed domain name is confusingly similar to the Complainant's trademarks, because it incorporates the BAYER trademark in its entirety. It is also noted that the mere addition of the generic and descriptive word "czech" is not enough to distinguish the disputed domain name from the trademark BAYER, since the Complainant also has operations and a representative company in Czech Republic. Additionally, it is claimed that the use of BAYER in combination with this term will definitely confuse Internet users as it is referring directly to the Complainant's domain name <bayer.cz>. Also, the addition of the TopLevel Domain ("TLD") ".com" is not significant in determining whether the disputed domain name is identical or confusingly similar to the trademarks of the Complainant.

The Complainant contends that the Respondent has no legitimate rights or interests in the disputed domain name, since the Respondent is not permitted or licensed by the Complainant in any way to use the trademark in any manner, including in domain names. The Complainant's BAYER trademark is well-known and obviously connected with the Complainant and its products. It is asserted that "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 the Complainant. Further, the Complainant claims that there is no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. The Complainant states that it received knowledge that the disputed domain name and the name of the Complainant's subsidiary in the Czech Republic, Bayer s.r.o., being fraudulently used by the Respondent to issue fake job offers in the Complainant's name in an attempt to extract money from the job candidates. The Respondent's use of the disputed domain name to send email scam is definitively not *bona fide* under the Policy. Finally, it is contended that there is also no evidence which suggests that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or is commonly known by the disputed domain name or the name "czechbayer".

Regarding bad faith, the Complainant submits that the Complainant and its trademarks were well reputed and predated, refers to various previous Panel decisions determining the well-known status of the Complainant's trademarks, and contends that it is clear the Respondent knew or should have known about the existence of the earlier and well-known BAYER trademarks. Moreover, the Complainant states that the disputed domain name is in connection with the Respondent's fraudulent activities. Furthermore, it is also asserted that the registration of the disputed domain name clearly prevents the Complainant from having such domain name and the Respondent has engaged in a pattern of such conduct. It is further claimed that the Respondent's use of the disputed domain name is qualified to disrupt the Complainant's business and that it is capable of reducing the number of visitors to the Complainant's website, which may adversely affect the Complainant's business and therefore constitutes bad faith. The registration of the disputed domain name by the Respondent is claimed to be also constituting an abusive threat hanging over the head of the Complainant, which also supports a finding of bad faith. Consequently, the Complainant is of the opinion that the disputed domain name is registered and used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Complainant must prove that the three elements of paragraph 4(a) of the Policy have been met for the disputed domain name, namely:

- (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 has been registered and is being used in bad faith.

Since the Respondent did not object to any of the contentions from the Complainant by not submitting a Response, the Panel will decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable and on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the explanations and evidence provided by the Complainant, the Panel is satisfied that the Complainant has valid trademark rights in the BAYER trademark, which is reproduced in its entirety in the disputed domain name. Additionally, the Panel considers that the addition "czech" does not prevent a finding of confusing similarity.

Furthermore, the addition of the generic Top-Level Domain ("gTLD") ".com" does not prevent a finding of confusing similarity, since it is merely a technical registration requirement to be disregarded typically.

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy lists non-exhaustively the relevant circumstances that could show the Respondent's rights or legitimate interests in a domain name, as follows:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved

based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to [the respondent] of the dispute, [the 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; or

(ii) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trademark or service mark rights; or

(iii) [the respondent] is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Panel notes that the Respondent has not filed a Response, and therefore, neither denied the Complainant's claims, nor brought any information or evidence to prove any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. In particular, the Complainant asserted that the Respondent is not licensed by the Complainant and the Complainant has not given to the Respondent permission to use its trademarks in any manner, including in domain names. The Complainant's BAYER trademark is well-known and obviously connected with the Complainant and its products. Further, there is no evidence of the Respondent's use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. It can be seen from the Annex 11 that the Complainant received knowledge of the disputed domain name and the name of the Complainant's subsidiary in the Czech Republic, Bayer s.r.o., being fraudulently used by the Respondent to issue fake job offers in the Complainant's name in an attempt to extract money from the job candidates. The Respondent's use of the disputed domain name to send email scam cannot be considered *bona fide* under the Policy.

The Complainant's registration and use of the BAYER trademark predates the registration of the disputed domain name. Since the Complainant made out a *prima facie* case, the burden of production shifts to the Respondent to establish its rights or interests in the disputed domain name. The Respondent, however, has not sought to rebut that *prima facie* case.

In light of the Complainant's assertions and evidence, the Panel finds that the Complainant has met the requirement under the Policy of *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists certain relevant non-exhaustive circumstances, which can be considered as the registration and use of a domain name in bad faith, namely:

“(i) circumstances indicating that [the respondent has] registered or acquired [a disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location."

The Panel must decide by examining all relevant circumstances of each case in question. It is possible that cumulative conditions lead to the finding of bad faith, such as the Complainant's trademark being well-known, no response submitted to the Complaint and a fraudulent use of the disputed domain name.

The disputed domain name incorporates the exact distinctive BAYER trademark of the Complainant, which cannot be considered as a coincidence. The Complainant has provided that the BAYER trademark is well-known, therefore, the fact that the Respondent decided to register the disputed domain name including this term in its entirety strongly suggests that the Respondent taken the Complainant's well-known BAYER trademark into account and targeted it specifically in order to gain unfair advantage.

As indicated by the Complainant, the fact that the configuration and use of "czechbayer.com" email extensions for fraudulent activities shows that there is unlawful use or intention thereof, which indicates bad faith.

The Panel considers that the disputed domain name falls under the circumstance (iv) of the paragraph 4(b) of the Policy, namely, "creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website". Considering the Complainant's trademark to be deemed well-known, as also previously determined by other panels, the Panel considers that the Respondent knew or should have known the disputed domain name includes the Complainant's well-known trademark and therefore, the registration cannot be in good faith.

See also, *Confédération Nationale du Crédit Mutuel v. Nicola Bazar*, WIPO Case No. [D2013-1572](#):

"Respondent knew or should have known that the Domain Name included Complainant's CREDIT MUTUEL well-known trademark. [...] However, passive holding of the website does not prevent the Panel from finding registration and use in bad faith. The Panel further notes that Respondent undeveloped use of the website at the Domain Name which incorporates Complainant's trademark in its entirety indicates that Respondent possibly registered the Domain Name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, as per paragraph 4(b)(iv) of the Policy."

Consequently, given the explanations in the Complaint and the evidence provided by the Complainant, the Panel decides that the third requirement is also met and both the registration and the use of the disputed domain name are 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, <czechbayer.com>, be transferred to the Complainant.

/Selma Ünlü/

Selma Ünlü

Sole Panelist

Date: June 6, 2023