

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Todd Peter
Case No. D2023-1737

1. The Parties

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

The Respondent is Todd Peter, Canada.

2. The Domain Name and Registrar

The disputed domain name <czechbayes.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 April 19, 2023. On April 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 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 26, 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 26, 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 May 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 6, 2023.

The Center appointed Alvaro Loureiro Oliveira as the sole panelist in this matter on June 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

The Complainant is a global enterprise with core competencies in the fields of healthcare, nutrition and plant protection, which global headquarters are in Leverkusen, Germany. The Complainant dates back to 1863 and has been identified by BAYER at least since 1888.

The Complainant is represented by over 374 consolidated companies in 83 countries and is manufacturing and selling numerous products including human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals.

The Complainant is the owner of numerous trademarks, namely over 700 registrations and pending applications for BAYER and BAYER-formed marks worldwide, including the following ones, *inter alia*:

- the international trademark BAYER, No. 1462909, registered on November 28, 2018, in classes 01, 03, 05, 09, 10, 31, 35, 41, 42 and 44,
- the international trademark BAYER, No. 1476082, registered on December 10, 2018, in classes 07, 08, 11, 16, 20, 24, 25, 28, 30, 32, 37, 38, 39, 40, 43 and 45.

Evidence of these registrations are produced as Annex 7 of the Complaint.

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

The Disputed Domain Name <czechbayers.com> was registered on March 31, 2023, and is not used in connection with an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's marks registered and used worldwide.

The term chosen by the Respondent to compose the disputed domain name together with Bayer and "Czech", which refers to the Czech Republic, where the Complainant has a subsidiary. The country abbreviation does not prevent the confusing similarity between the disputed domain name and the Complainant's trademark. On the contrary, they lead to confusion, given the presence of the Complainant's mark.

The Complainant owns several registrations worldwide for trademark BAYER, as evidenced in Annex 07 of the Complaint. Also, evidence of the renown of the Complainant and of the BAYER trademark was produced in Annexes to the Complaint.

The disputed domain name adopted by the Respondent – a reproduction of the Complainant's registered trademark associated with a country name – shows a clear intention of misleading Internet users.

The disputed domain name does not resolve to an active website, as per Annex 10.

Nevertheless, the Complainant alleges that the Respondent has been contacting people, sending out email communications from the an email address associated with the disputed domain name, purporting to originate from a certain individual, to issue fake job offers in the Complainant's name in an attempt to extract money from job candidates. Proof of this attempt was presented as Annex 11 of the Complaint.

The Complainant alleges that the registration and use of the disputed domain name intentionally misleads Internet users, and that the disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

The Policy, in its paragraph 4(a), determines that three elements must be presented and duly proven by a Complainant to obtain relief. These elements are:

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

A. Identical or Confusingly Similar

The disputed domain name is, indeed, confusingly similar to the BAYER trademark, as it is entirely incorporated in the disputed domain name.

The Complainant has presented consistent evidence of ownership of the trademark BAYER, in jurisdictions throughout the world, by presenting a substantial number of registrations for them, as well as comprehensive evidence of the use of the trademark.

The use of the trademark BAYER with the term "czech" in the disputed domain name, as well as the insertion of the letter "s" does not prevent a finding of confusing similarity with the trademark.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element.

Given the above, the Panel concludes that the disputed domain name is confusingly similar to the registered trademark of the Complainant.

B. Rights or Legitimate Interests

Given the clear evidence that the trademark BAYER is registered in the name of the Complainant and is widely known as identifying the Complainant's activities for over 135 years, and that the Complainant has not licensed this to the Respondent, the Panel finds that the Complainant has established *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

In the absence of a Response, the Respondent has not rebutted such *prima facie* case. Also, the Respondent does not appear to be commonly known by the disputed domain name.

It has also been shown that the Respondent is not making any direct use of the disputed domain name, having registered it to create a likelihood of confusion with the Complainant's mark. Further, the Complainant provides evidence that the Respondent has been establishing false email addresses associated with the disputed domain name and used in relation to phishing activity. The existence of at least one of these emails is shown in Annex 11.

The Panel, thus, finds for the Complainant under the second element of the Policy.

C. Registered and Used in Bad Faith

Given the circumstances of this case, the facts outlined in sections A and B above can also evidence the Respondent's bad faith in the registration and use of the disputed domain name.

The Respondent intended to give an overall impression that the disputed domain name is associated with the Complainant, and the Panel accepts that the disputed domain name is likely intended to capitalize on the fame and goodwill of the Complainant's trademark.

The current passive holding of the disputed domain name, which does not currently resolve to an active website does not prevent a finding of bad faith. The Respondent has acted in bad faith by registering and using the disputed domain name, seeking to attract Internet users by creating a likelihood of confusion with the Complainant's mark BAYER and siphoning Internet traffic away from the Complainant's official websites.

The Complainant has also submitted evidence of a fraudulent email scheme executed by the Respondent, using an email account relating to the disputed domain name and emulating an official job offer.

All the points above lead to the conclusion by this Panel that the Respondent was fully aware of the Complainant when registering the disputed domain name and that the Respondent registered and is using the disputed domain name in bad faith.

The Panel finds that the Complainant has also proved 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 disputed domain name, <czechbayes.com> be transferred to the Complainant.

/Alvaro Loureiro Oliveira/

Alvaro Loureiro Oliveira

Sole Panelist

Date: July 2, 2023