

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Basma HERHOUR, Herhour Basma
Case No. D2023-1880

1. The Parties

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

The Respondents are Basma HERHOUR, France, Herhour Basma, France.

2. The Domain Names and Registrars

The disputed domain name <global-bayer.com> is registered with NETIM SARL.

The disputed domain name <globalbayer.com> is registered with Namebay (the “Registrars”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 26, 2023. On April 27, 2023, the Center transmitted by email to the Registrars requests for registrar verification in connection with the disputed domain names. On April 28, 2023, and May 2, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (John Doe, Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 4, 2023, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 5, 2023.

On May 4, 2023, the Center informed the Parties in French and English, that the language of the registration agreement for the disputed domain name <global-bayer.com> is English, and the language of the registration agreement for the disputed domain name <globalbayer.com> is French. On May 5, 2023, the Complainant confirmed its request that English be the language of the proceeding. The Respondents did not submit any comment on the Complainant’s submission.

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 Respondents of the Complaint both in English and in French, and the proceedings commenced on May 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondents' default on June 1, 2023.

The Center appointed Delia-Mihaela Belciu as the sole panelist in this matter on June 7, 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. The Complainant's stock is included in nearly all the major share indices, traded on all German stock exchanges and included in the DAX40, a Blue-Chip stock market index consisting of the 40 major German companies trading on the Frankfurt Stock Exchange.

The Complainant's company name BAYER dates back to 1863. This company began manufacturing and marketing pharmaceutical products in 1888 and has sold such products under the BAYER trademark ever since.

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 the subgroups like HealthCare and CropScience, does business on all five continents, manufacturing and selling numerous of products, *inter alia*, human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals. The Complainant provides information on its company online, *inter alia*, at "www.bayer.com".

The Complainant owns numerous BAYER trademarks, including:

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

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

Both disputed domain names were registered on November 23, 2022, and at the time of filing the Complaint neither one was used in connection to active websites.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain names are confusingly similar to the Complainant's BAYER mark, as both incorporate in its entirety its BAYER mark.

The Complainant asserts that an Internet user will clearly recognize the well-known BAYER marks in the disputed domain names.

In the Complainant's view, the additional word "global" is merely generic and not suitable to eliminate the similarity between the Complainant's trademark and the disputed domain names. On the contrary, the

Complainant asserts that such addition can easily be associated with the Complainant, which owns the domain name <bayer-global.com>.

The Complainant further alleges that the specific Top-Level Domain, in this case for both disputed domain names the generic Top-Level Domain (“gTLD”) “.com”, is generally not an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between the Complainant’s trademark and the disputed domain names.

For these reasons, the Complainant concludes that the disputed domain names are confusingly similar to its BAYER marks.

The Complainant further contends that the Respondents do not have any rights or legitimate interests in the disputed domain names for a number of reasons.

First, the Complainant asserts that the BAYER marks are well known and connected with the Complainant and its products. The Complainant alleges 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 (see *Bayer AG v. Name Redacted*, WIPO Case No. [D2022-4639](#)).

Secondly, the Complainant contends that it has not licensed or otherwise permitted the Respondents to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the BAYER marks.

Thirdly, the Complainant alleges that there is no evidence of the Respondents’ use of, or demonstrable preparations to use the disputed domain names or names corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy. In fact, the Complainant asserts that the Respondents are not using the disputed domain names at all.

Fourthly, the Complainant contends that there is also 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 the names “globalbayer” or “global-bayer”.

For these reasons, the Complainant concludes that it has presented a *prima facie* case that the Respondents lack rights or legitimate interests in the disputed domain names.

The Complainant further contends that the disputed domain names were registered and are being used in bad faith.

To this end, the Complainant argues that the denomination “Bayer” is obviously not a word a domain name registrant would legitimately choose unless seeking to create an impression of an association with the Complainant. In addition, in the Complainant’s view, based on the Complainant’s high profile worldwide, it is inconceivable that the Respondents registered the disputed domain names unaware of the Complainant and its rights in its highly distinctive and well-known BAYER marks.

Further, the Complainant contends that the Respondents’ registration of the disputed domain names clearly prevents the Complainant from reflecting its trademarks in a corresponding domain name and the Respondent has engaged in a pattern of such conduct, as set out in paragraph 4(b)(ii) of the Policy.

In the Complainant’s view, the fact that the Respondents are not actively using but merely passively holding the disputed domain names does not obstruct a finding of bad faith use under the Policy as, in the present case, such passive holding of the disputed domain names is equal to active use.

The Complainant further contends that the circumstances in this case clearly justify the equation of passive holding and active use, because:

- the Complainant's BAYER marks are highly distinctive and well known;
- the Respondents have provided no evidence whatsoever of any actual or contemplated good faith use;
- the disputed domain names clearly target the Complainant, which is the registered owner of the domain name <bayer-global.com>; and
- from all of the circumstances, there does not appear to be any possible or conceivable good faith use of the disputed domain names that would not be illegitimate.

The Complainant asserts further that the registration of the disputed domain names by the Respondents also constitutes an abusive threat hanging over the head of the Complainant, which also supports a finding of bad faith.

For all these reasons, the Complainant concludes that, the disputed domain names were registered and are being used in bad faith.

B. Respondents

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

6. Discussion and Findings

6.1 Preliminary Issues

A. Consolidation of the proceedings with respect to the two disputed domain names

Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. At the same time, paragraph 3(c) of the UDRP Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

The Panel finds that there are sufficient grounds to accept the consolidation of the proceedings in this case with regard to both disputed domain names, considering especially that (i) the name of the registrant of both domain names appears to be the same (in a different order), (ii) the address of the registrant has identical elements for both disputed domain names, with the mention that, the registrant's address related to the disputed domain name <globalbayer.com> has a few more elements in addition to the ones which are identical to the ones related to the disputed domain name <global-bayer.com>, (iii) the registrant's contact email for both disputed domain names is the same, (iv) both disputed domain names were registered on the same day, (v) the nature of the targeted marks at issue is the same, namely BAYER, (vi) the naming pattern in both disputed domain names is very similar, namely <globalbayer.com> and <global-bayer.com>, (vii) both disputed domain names are inactive, which leads to the assumption that the registrant for both disputed domain names appears to be the same, (see section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). Hereinafter, the Panel will refer to the Respondents as the "Respondent".

B. Language of the proceeding

Pursuant to paragraph 11 of the UDRP Rules, unless otherwise agreed by the parties, the default language of the proceeding is the language of the registration agreement, subject to the authority of the panel to determine otherwise.

Paragraph 10 of the UDRP Rules vests a panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party

is given a fair opportunity to present its case. Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement (see section 4.5 of the [WIPO Overview 3.0](#)).

The language of the registration agreement for the disputed domain name <global-bayer.com> is English, while the one for the disputed domain name <globalbayer.com> is French.

The Panel agrees with the request made by the Complainant in order for the language of the proceeding for both disputed domain names to be English, considering that (i) the Respondent registered one of the disputed domain names using an English language registration agreement, *i.e.* for <global-bayer.com>, which may lead to the assumption that the Respondent apparently can understand English, and in addition, in any case, the language of the proceeding related to the disputed domain name <global-bayer.com> is by default English, according to paragraph 11 of the UDRP Rules, thus, making the Respondent already part to a proceeding in English, (ii) the Complainant is not able to communicate in French, which might lead to potential unfairness or unwarranted delay in ordering the complainant to translate the complaint (see section 4.5 of the [WIPO Overview 3.0](#)).

The Respondent failed to submit any response to the request of the Complainant as to the language of the proceedings for both disputed domain names to be English, after having been given the chance in both English and French languages, to comment.

6.2 Substantive Issues

In order for the Complainant to succeed, it must prove, according to paragraph 4(a) of the Policy, that:

- (i) the disputed domain names are 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 with respect to the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

In case all three elements above have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. Thus, the Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy, the Complainant has to show that the disputed domain names are (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to the requirement of having rights pursuant to paragraph 4(a)(i) of the Policy, the Complainant owns BAYER registered trademarks, in several jurisdictions. Consequently, the Panel finds that this requirement is fulfilled.

With regard to the assessment of identity or confusing similarity of the disputed domain names with the BAYER trademarks, it is generally accepted that this involves a side-by-side comparison of the domain names and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain names. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see section 1.7 of the [WIPO Overview 3.0](#)).

The Panel finds that the disputed domain names are confusingly similar to the BAYER trademarks as they incorporate the BAYER mark in its entirety, and the addition of the term “global” in both disputed domain names, such being separated by hyphen within the disputed domain name <global-bayer.com> does not

prevent a finding of confusing similarity. The BAYER mark remains clearly recognizable within the disputed domain names (see also *Bayer AG v. Name Redacted*, *supra*; see section 1.8 of the [WIPO Overview 3.0](#)).

In what concerns the addition of the gTLD “.com”, this is not to be taken into consideration when examining the confusing similarity between the Complainant's trademarks and the disputed domain names, as such is viewed as a standard registration requirement and such is disregarded under the first element confusing similarity test (see section 1.11 of the [WIPO Overview 3.0](#)).

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. Once such *prima facie* case is made out, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain names. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see section 2.1 of the [WIPO Overview 3.0](#)).

In this case, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names, which has not been rebutted by the Respondent, as the Respondent has not submitted any response.

Thus, based on the available evidence, the Respondent does not appear to be commonly known by the disputed domain names. The Respondent is not a licensee of the Complainant. The Complainant has never authorised the Respondent to use its BAYER trademarks nor to make use of its BAYER trademarks in the disputed domain names.

Furthermore, the disputed domain names comprise the Complainant's BAYER mark in its entirety with the addition of the term “global” in both disputed domain names, such being separated by hyphen within the disputed domain name <global-bayer.com>, which can easily be associated with the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#)). Moreover, the Panel notes that the Complainant currently owns the domain name <bayer-global.com>, leading thus to confusion for Internet users as to the disputed domain names' affiliation with the Complainant.

Moreover, the BAYER marks are well known and connected with the Complainant and its products, as other numerous panels in prior UDRP disputes have found (see *Bayer Aktiengesellschaft v. Yongho Ko*, WIPO Case No. [D2001-0205](#); *Bayer Aktiengesellschaft v. K Dangos*, WIPO Case No. [D2002-0138](#); *Bayer Aktiengesellschaft v. Amaltea Impex SRL*, WIPO Case No. [DRO2005-0006](#); *Bayer Aktiengesellschaft v. Sonny Mei*, WIPO Case No. [D2006-1349](#); *Bayer AG v. WebContents, Inc* (www.webcontents.com), WIPO Case No. [D2009-0484](#); *Bayer Aktiengesellschaft and Bayer Healthcare LLC v. PrivacyProtect.org, Domain Admin / Pantages Inc, Pantages*, WIPO Case No. [D2011-0201](#); *Bayer AG v. Med Chem, Inc*, WIPO Case No. [D2013-1286](#); *Bayer AG v. Maria Guadalupe Arellano Sanchez*, WIPO Case No. [D2014-1991](#); *Bayer AG v. huang cheng*, WIPO Case No. [D2015-1932](#); *Bayer AG v. Ruud van der Linden*, WIPO Case No. [D2017-0328](#); *Bayer AG v. Private Registration / Mark Nowak*, WIPO Case No. [D2017-1706](#); *Bayer AG v. Wu Zi Jun*, WIPO Case No. [D2018-2676](#); *Bayer AG v. Zhaodongxu*, WIPO Case No. [D2019-2576](#); *Bayer AG v. Whoisprotection.cc / Drago Price, Bayer*, WIPO Case No. [D2020-0051](#); *Bayer AG v. Withheld for Privacy Purposes Privacy service provided by Withheld for Privacy ehf / Todd Peter*, WIPO Case No. [D2021-2726](#)).

The above does not amount to a *bona fide* offering of goods or services, or to a legitimate noncommercial or fair use of the disputed domain names.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the domain name has been registered and is being used in bad faith.

In this case, the Complainant's rights to the BAYER trademark predate the registration date of the disputed domain names.

The BAYER trademark is registered in several jurisdictions around the world and enjoys a well-known and highly distinctive character, recognized by earlier UDRP panels as well (see the cases cited in the previous Section).

In light of the well-known character of the BAYER trademarks, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the disputed domain names without knowledge of the Complainant's BAYER mark, which support a finding of bad faith registration.

The Respondent's incorporation into both disputed domain names of the Complainant's BAYER mark in its entirety with the addition of the term "global", such being separated by hyphen within the disputed domain name <global-bayer.com>, creates a likelihood of confusion with the Complainant and the Complainant's BAYER mark. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see section 3.1.4 of the [WIPO Overview 3.0](#)).

The disputed domain names do not resolve to active websites and appear to be passively held. From the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Noting: (i) the degree of distinctiveness and 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) and the implausibility of any good faith use to which the inherently misleading disputed domain names may be put, the Panel finds that the passive holding of the disputed domain names does not prevent a finding of bad faith (see section 3.3 of the [WIPO Overview 3.0](#)).

For all these reasons, the Panel finds that the disputed domain names have been registered and are being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

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, <global-bayer.com> and <globalbayer.com>, be transferred to the Complainant.

/Delia-Mihaela Belciu/

Delia-Mihaela Belciu

Sole Panelist

Date: June 21, 2023