

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Flemmy Davids

Case No. D2023-1984

1. The Parties

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

The Respondent is Flemmy Davids, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <bayerengineeringsservices.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 May 4, 2023. On May 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 4, 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 May 5, 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 May 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 May 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 5, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on June 9, 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 operates in the health care, nutrition, and plant protection businesses on five continents, manufacturing and selling, *inter alia*, pharmaceutical and medical care products, veterinary products, diagnostic products, and agricultural chemicals.

The Complainant's history dates back to 1863, when the firm of "Friedrich Bayer & Co." was established in the town of Elberfeld, now part of the city of Wuppertal in Germany. In 1881, the name was transferred to a stock corporation called "Farbenfabriken vorm. Friedrich Bayer & Co." which began manufacturing and marketing pharmaceutical products in 1888 and has sold such products under the BAYER trademark ever since.

The Complainant is the owner of the following, amongst numerous others, trademarks (Annex 7 to the Complaint):

- International trademark registration No. 1462909, for BAYER, registered on November 28, 2018, in classes 1, 3, 5, 9, 10, 31, 35, 41, 42 and 44;
- International trademark registration No. 1476082, for BAYER, registered on December 10, 2018, in classes 7, 8, 11, 16, 20, 24, 25, 28, 30, 32, 37, 38, 39, 40, 43 and 45.

The disputed domain name was registered on March 19, 2023, and presently does not resolve to an active webpage. The disputed domain name has been used in connection with a fraudulent email scheme offering fake jobs (Annex 11 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant asserts to be a global enterprise headquartered in Germany, holding over 374 consolidated companies in 83 countries and counting with more than 101,000 employees worldwide, doing business on all five continents, manufacturing and selling numerous of products, *inter alia*, human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals.

As a result of the exclusive and extensive use, the Complainant further asserts that its BAYER trademark has acquired a significant goodwill and become widely known, as recognized by previous decisions decided under the UDRP for more than 20 years which have consistently found that the Complainant's BAYER trademark is well known (Annex 9 to the Complaint).

According to the Complainant, the Complainant's BAYER trademark is entirely reproduced and clearly recognizable in the disputed domain name, and the addition of the terms "engineering" and "services" does not eliminate the similarity between the trademark and the disputed domain name.

Also according to the Complainant, the Respondent has no rights or legitimate interests in the disputed domain name given that:

- (i) the Complainant's BAYER trademark is well known and obviously connected with the Complainant and its products, "Bayer" not being a word any market participant would legitimately choose unless seeking to create an impression of an association with the Complainant;

- (ii) the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the BAYER trademark;
- (iii) there is no evidence that 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, rather the Respondent used the disputed domain name in connection with an email scam in an attempt to extract money from potential job candidates;
- (iv) there is no evidence which suggests that the Respondent is or has been commonly known by the disputed domain name.

The Complainant contends that the registration of the disputed domain name was done clearly in bad faith given that the BAYER trademark is a highly distinctive and well-known trademark solely connected with the Complainant and would not be an expression that a trader would legitimately choose unless seeking to create an undue association with the Complainant's trademark. Furthermore, the Complainant contends that the Respondent deliberately targeted the Complainant in view of the Respondent's fraudulent activities seeking to impersonate the Complainant.

The Complainant further contends that the Respondent is preventing the Complainant from reflecting its trademark in a corresponding domain name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth the following three requirements which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

A. Identical or Confusingly Similar

The Complainant has established rights in the BAYER trademark (Annex 7 to the Complaint).

The Panel finds that the disputed domain name reproduces the Complainant's trademark in its entirety. The addition of the terms "engineering" and "services" does not avoid a finding of confusing similarity under the Policy, which, as recognized by past UDRP panels, involves a "comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name". (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.)

The first element of the Policy has therefore been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that indicate a respondent's rights or legitimate interests in a disputed domain name. These circumstances are:

- (i) before any notice of the dispute, 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; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any such inferences from such default as it considers appropriate pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make a *prima facie* case against the Respondent.

In that sense, the Complainant indeed states that it has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the BAYER trademark.

In addition to that, the use being made of the disputed domain name, in connection with an email scheme offering fake job opportunities impersonating the Complainant does not demonstrate the Respondent's use of the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

Further, panels have categorically held that the use of a domain name for illegal activity (e.g., phishing, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. ([WIPO Overview 3.0](#), section 2.13.1.)

Under these circumstances and absent evidence to the contrary, the Panel finds that the Respondent does not have rights or legitimate interests with respect to the disputed domain name.

C. Registered and Used in Bad Faith

The Policy indicates in paragraph 4(b)(iv) of the Policy that bad faith registration and use can be found in respect of the disputed domain name, where a respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other online location, by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In this case, the use of the disputed domain name in connection with the fraudulent email scheme described above impersonating the Complainant characterizes the Respondent's possible intent of commercial gain by misleadingly diverting potential job candidates to the Respondent. Furthermore, panels have consistently found that "given that the use of a domain name for *per se* illegitimate activity such as the sale of counterfeit goods or phishing can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith". ([WIPO Overview 3.0](#), section 3.1.4.)

The other elements that may corroborate a finding of the Respondent's bad faith conduct in this case are: (i)

the Respondent's lack of reply to the procedure; and (ii) the Respondent's choice to retain a privacy protection service to conceal his identity.

For the reasons stated above, the Respondent's conduct amounts, in this Panel's view, to bad faith registration and use of the disputed domain name.

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 <bayerengineeringservices.com> be transferred to the Complainant.

/Wilson Pinheiro Jabur/

Wilson Pinheiro Jabur

Sole Panelist

Date: June 23, 2023