

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Hannart Michael
Case No. D2023-2022

1. The Parties

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

The Respondent is Hannart Michael, Belgium.

2. The Domain Name and Registrar

The disputed domain name <globalbayer-be.com> is registered with Hostinger, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2023. On May 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 8, 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 (Domain Admin, Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 9, 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 10, 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 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 31, 2023. The Respondent sent two informal emails on May 9 and 10, 2023.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on June 13, 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 German publicly traded corporation, originating in 1863 when Friedrich Bayer & Co. was established. Over the last 160 years, it has grown internationally to become one of the leading pharmaceutical companies in the world, with over 100,000 employees and a turnover in 2021 of more than EUR 44 billion. The Complainant has operations in 83 countries through over 374 subsidiaries, including in Belgium where the Respondent is apparently located.

The disputed domain name <globalbayer-be.com> does not resolve to an active website at the time of this decision.

The identity of the Respondent was disclosed by the Registrar in response to the Center's request for registrar verification in connection with the disputed domain name.

The Complainant has submitted evidence that the Respondent sent fraudulent emails to a third party in view of having that party deliver goods on the basis of bogus purchase orders, thus engaging in a phishing scheme.

The Complainant owns a large portfolio of registered trademarks containing the trademark BAYER, including, *inter alia*, the International Trademark No. 1462909, registered on November 28, 2018, and the International Trademark No. 1476082, registered on December 10, 2018 (together hereinafter referred to as "the Mark").

The Complainant also owns hundreds of domain names, including <bayer.com> (which resolves to its official website) and <bayer.be>.

The disputed domain name, <globalbayer-be.com>, was created on April 4, 2023.

5. Parties' Contentions

A. Complainant

- (i) The Complainant contends that the Respondent sent emails from the disputed domain name that pretended to be from an employee of the Complainant's Belgium subsidiary, which the Complainant received. Specifically, the Complainant alleges that the Respondent sent purchase orders to one of the Complainant's suppliers located in Germany, using counterfeit stationery bearing the familiar Bayer Cross. This stationery was designed to deceive the supplier into believing that the purchase order came from the Complainant's Belgian subsidiary, Bayer SA-NV (Annex 11 of the Complaint).
- (ii) The Complainant submits that the disputed domain name reproduces the Mark, in which the Complainant has rights, and is confusingly similar to the Mark insofar as the disputed domain name contains the distinctive element "bayer" in its entirety, and that the addition of the element "global", a hyphen and the country-code "be" is not capable of dispelling the confusing similarity.
- (iii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never authorized the Respondent to use the Mark in any manner and that the Respondent has never had any affiliation with the Complainant.
- (iv) The Complainant submits that the Respondent has registered the disputed domain name in bad faith. The Complainant alleges that the Respondent had knowledge of the Mark when registering the disputed domain name.
- (v) The Complainant submits that the Respondent is using the disputed domain name in bad faith.

(vi) The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent did not reply to the Complainant's contentions. In the emails of May 9, 2023, and May 10, 2023, the Respondent stated "Veuillez réactiver le compte" and "You should not deactivate the domain name, it is not normal, please reactivate it".

6. Discussion and Findings

6.1. Procedural Aspects - Failure to reply to the Complainant's contentions

In this case, the Panel finds that as a result of the Respondent not replying to the Complainant's contentions, the Respondent has failed to rebut any of the reasonable factual assertions that are made and supported by evidence submitted by the Complainant. In particular, the Respondent has failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent has failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

A. Identical or Confusingly Similar

In comparing the Mark with the disputed domain name <globalbayer-be.com>, it is evident that the latter consists of the Mark, preceded by the term "global" and followed by a hyphen, the letters "be" and the generic Top-Level Domain ("gTLD") ".com".

It is well established that a gTLD does not generally affect the assessment of a domain name for the purpose of determining identity or confusingly similarity. See section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that the disputed domain name <globalbayer-be.com> is confusingly similar to the Mark, which is incorporated in its entirety, and that the addition of elements such as "global" or "-be" before or after the element "bayer" in the disputed domain name does not prevent a finding of confusing similarity, the Mark remaining recognizable within the disputed domain name.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy, this could result in the often impossible task of proving a negative proposition, requiring information that is primarily, if not exclusively, within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#) and section 2.1 of the [WIPO Overview 3.0](#).

As previously noted, the Respondent offered no reason for selecting the disputed domain name and did not reply to the Complainant's contentions.

There is no evidence that the Respondent is commonly known by the disputed domain name or uses (or has made preparations to use) the disputed domain name for a *bona fide* business. The disputed domain name does not direct the public to any active website.

No information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued that the Respondent (i) has no affiliation with the Complainant and (ii) received no authorization from the Complainant to register or use the disputed domain name.

In addition, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety in combination with the elements "global" and "-be" and the gTLD ".com", carries a high risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#). Moreover, the actual use of the disputed domain name affirms the reality of such risk.

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

C. Registered and Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant by registering the disputed domain name.

First, the registration of a domain name that is confusingly similar to a trademark by an entity that has no relationship to that mark may be, depending on the circumstances, evidence of opportunistic bad faith. See *Ebay Inc. v. Wangming*, WIPO Case No. [D2006-1107](#); *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. [D2000-0163](#).

Second, it is established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may be, in certain circumstances, sufficient evidence of bad faith registration and use. See *Weetabix Limited v. Mr. J. Clarke*, WIPO Case No. [D2001-0775](#).

In this case, considering the fact that the Mark is well known, as more than a dozen prior UDRP panels have confirmed, the Panel finds that it is impossible to believe that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See *Barney's Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#), citing *Cellular One Group v. Paul Brien*, WIPO Case No. [D2000-0028](#); and *Sembcorp Industries Limited v. Hu Huan Xin*, WIPO Case No. [D2001-1092](#).

Furthermore, section 3.1.4 of the [WIPO Overview 3.0](#), states that evidence that a disputed domain name has been used for phishing purposes may be considered evidence of bad faith use. The Complainant provided evidence that phishing emails using the disputed domain name were sent, purportedly signed by an employee of the Complainant's Belgian subsidiary. The Panel notes that the Respondent has previously engaged in a pattern of fraudulent conduct which resulted in at least three prior UDRP panels ordering transfers of domain names registered by the Respondent (see *Accenture Global Services Limited v. Michael Hannart*, WIPO Case No. [D2020-1365](#); *Etablissementen Franz Colruyt, Naamloze Vennootschap v. Redacted for Privacy / Michael Hannart*, WIPO Case No. [D2020-1993](#) and *BASF SE v. Hannart Michael*, WIPO Case No. [D2022-4225](#)). The Panel draws from these circumstances an inference of bad faith use of the disputed domain name by the Respondent.

Besides, the Panel notes that many UDRP panels have held that bad faith use of a domain name by a respondent may result from the fact its good faith use is in no way plausible (see *Audi AG v. Hans Wolf*, WIPO Case No. [D2001-0148](#)), considering the specificity of the activity. The Panel notes that the Respondent has submitted no evidence of any good faith use of the disputed domain name and finds it is not possible to imagine any plausible future active use of the disputed domain name that would not be illegitimate.

Finally, prior UDRP panels have held that in certain circumstances, registrants of domain names would have a duty to abstain from registering and using a domain name which is either identical or confusingly similar to a prior trademark held by others and which would infringe upon or otherwise violate the rights of a third party. See *Holding Le Duff "HLD" v. Charlotte Campigna*, WIPO Case No. [D2022-4166](#). See also Policy, paragraph 2(b); *Nike, Inc. v. Ben de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitute bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

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

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: June 23, 2023