

## **ADMINISTRATIVE PANEL DECISION**

**Bayer AG v. Claude Robert Cecius**  
**Case No. D2023-2166**

### **1. The Parties**

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

The Respondent is Claude Robert Cecius, Belgium.

### **2. The Domain Name and Registrar**

The disputed domain name <bayer-belgium.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 17, 2023. On May 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 23, 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 24, 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 June 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 29, 2023.

The Center appointed Anna Carabelli as the sole panelist in this matter on July 19, 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 based in Germany, with the main practice area in the fields of healthcare, nutrition and plant protection. The Complainant, itself or through the subgroups like HealthCare and CropScience, does business on five continents, manufacturing and selling numerous of products, *inter alia* human pharmaceutical and medical care products, diagnostic products, and agricultural chemicals.

The company name BAYER dates back to 1863, and the BAYER trademark has been used on pharmaceutical products since 1888. The Complainant owns numerous trademarks for the mark BAYER alone covering an extensive range of goods and services., including:

- International trademark registration no. 1462909, registered since November 28, 2018 and
- International trademark registration no. 1476082, registered since December 10, 2018.

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

Previous decisions rendered under the UDRP in more than 20 years have consistently found that the Complainant's BAYER mark is well known.

The disputed domain name was registered on April 17, 2023. The evidence submitted in the Complaint shows that the disputed domain name is used in connection with a parking website featuring advertising links for third parties' websites, including links to the Complainant's competitors.

The evidence also shows that the Respondent was using the disputed domain name to send a purchase order to one of the Complainant's suppliers located in Italy, using counterfeit Bayer stationery. The purchase order was sent in the name of a certain Michael HANNART. The Complainant's supplier in Italy promptly informed the Complainant about the fraud attempt.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant submits and contends that:

- The disputed domain name is confusingly similar to the Complainant's registered and well-known BAYER mark because it consists of that trademark in its entirety together with the word "belgium" and the generic Top-Level Domain ("gTLD") ".com".
- The Respondent has no rights or legitimate interests in the disputed domain name. 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 mark. There is also no evidence suggesting 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 "Bayer-Belgium". 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. The Respondent's use of the disputed domain name to send email scam and in connection with a parking website are no *bona fide* use under the Policy.
- The disputed domain name was registered in bad faith. 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, based on the Complainant's high profile worldwide and the fact that the Respondent deliberately targets the Complainant, it is inconceivable that the Respondent

registered the disputed domain name unaware of the Complainant and its rights in its highly distinctive and well-known BAYER mark.

- The disputed domain name is being used in bad faith. The circumstances of the case clearly indicate that the disputed domain name is used in connection with fraudulent activities, *i.e.* to send fake purchase orders to one of the Complainant's suppliers located in Italy, using counterfeit stationery bearing the familiar Bayer Cross. The Complainant contends that the disputed domain name is part of the series of scams it has recently dealt with, which led the Complainant to file a complaint under the UDRP (*Bayer AG v. Hannart Michael*, WIPO Case No. [D2023-2022](#)) on May 5, 2023 regarding the domain name <globalbayer-be.com>. Also in that case, the complaint involved a forged purchase order issued by someone named Michael HANNART. This Michael HANNART has been repeatedly misusing other people's trademarks and sending fake emails from domain names that include those trademarks. His actions have been deemed to be in bad faith in at least three previous UDRP cases (See *Accenture Global Services Limited v. Michael Hannart*, WIPO Case No. [D2020-1365](#); *Etablissements Franz Colruyt, Naamloze Vennootschap v. Redacted for Privacy / Michael Hannart*, WIPO Case No. [D2020-1993](#); *BASF SE v. Hannart Michael*, WIPO Case No. [D2022-4225](#)).

In addition, by using the disputed domain name in connection with a website which is set up to display sponsored listings, the Respondent is, in all likelihood, trying to divert traffic intended for the Complainant's website to its own for the purpose of earning revenues from Internet users searching for the Complainant's website. The use and exploitation of trademarks to obtain click-through revenues from the diversion of Internet users has in many decisions been found to qualify as bad faith under paragraph 4(b)(iv) of the Policy

Based on the above, 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.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (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.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

## A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark BAYER based on the evidence submitted in the Complaint.

The disputed domain name consists of the Complainant's trademark BAYER with addition of a hyphen and the word "belgium", followed by the gTLD ".com".

The addition of the gTLD such as ".com" is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test (see section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Therefore, the relevant comparison to be made is with the second-level portion of the disputed domain name, *i.e.*, "bayer-belgium". As highlighted in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the threshold test for confusing similarity typically involves a side-by-side 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. The disputed domain name entirely incorporates the Complainant's mark BAYER and this is a sufficient element to establish confusing similarity, as held by previous UDRP panels (*e.g.*, *Banca Mediolanum S.p.A. v. Domains By Proxy, LLC / Marzia Chiarello*, WIPO Case No. [D2020-1955](#); *Virgin Enterprises Limited v. Domains By Proxy LLC, Domainsbyproxy.com / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-1923](#); *Patagonia, Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2019-1409](#)).

As recorded in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element.

Accordingly, the Panel finds that disputed domain name is confusingly similar to a mark in which the Complainant has rights. Therefore, the Complainant has established paragraph 4(a)(i) of the Policy.

## B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) before any notice to it of the dispute, its use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services;
- (ii) it has been commonly known by the domain name, even if it has acquired no trademark or service mark rights;
- (iii) it 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 Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, based on the following: (a) the Complainant holds prior rights in the globally registered and well-known BAYER mark, (b) the Respondent has not been authorized to use the Complainant's trademark in any way, and is not commonly known by the disputed domain name, (c) the disputed domain name resolves to a parking website featuring advertising links for third parties' websites, including links to the Complainant's competitors, and has been used to send scam emails.

According to section 2.1 of the [WIPO Overview 3.0](#), while the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests

in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Here the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. By not submitting a response, the Respondent has failed to invoke any circumstance, which could have demonstrated any rights or legitimate interests in the disputed domain name under paragraph 4(c) of the Policy.

According to the evidence submitted by the Complainant - which has not been challenged by the Respondent – the disputed domain name has been used to send scam emails. Previous panels have unanimously and consistently held that the use of a domain name for illegal activity, such as phishing, impersonation/passing off or other types of fraud can never confer rights or legitimate interests on a respondent (see section 2.13.1 of the [WIPO Overview 3.0](#)). The use in connection with a parking website displaying competing commercial pay-per-click links does not give rise to rights or legitimate interests in the disputed domain name.

Based on the above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

According to paragraph 4(a)(iii) of the Policy, the Complainant must establish that the disputed domain name has been registered and used in bad faith.

In this case, considering the fact that the BAYER 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 Complainant’s mark. (See *Bayer AG v. Hannart Michael* WIPO Case No. D2023-2022, citing *Barney’s Inc. v. BNY Bulletin Board*, WIPO Case No. [D2000-0059](#); *Kate Spade, LLC v. Darmstadter Designs*, WIPO Case No. [D2001-1384](#)). The uncontested evidence submitted by the Complainant shows that email address based on the disputed domain name was used to send scam emails which misused the Complainant’s trademark by counterfeiting the Complainant stationary bearing the Bayer Cross logo. This indicates that the Respondent knew and targeted the Complainant when registering the disputed domain name, and leads to a finding of registration in bad faith.

Furthermore, section 3.1.4 of the [WIPO Overview 3.0](#), states that evidence that a disputed domain name has been used for fraudulent purposes may be considered evidence of bad faith use. Previous panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution.

The Complainant has provided evidence that the disputed domain name has also been used in connection with a parking website displaying competing commercial pay-per-click links. The Respondent is probably deriving some income from each click on those links thereby capitalizing on the Complainant’s trademark and goodwill for its own profit. The Panel notes that section 3.5 of the [WIPO Overview 3.0](#), states that even if the respondent itself may not have directly profited, that would not by itself prevent a finding of bad faith. The Panel finds the use of the confusingly similar disputed domain name to lure Internet users to websites hosting links to competing products is evidence of bad faith. See *Sodexo v. 杨智超 (Zhi Chao Yang)*, WIPO Case No. [D2020-1171](#), *Intercontinental Exchange Holdings, Inc. v. 殷磊 (Yin Lei)*, WIPO Case No. [D2021-1395](#)) and that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its webpage, by creating a likelihood of confusion with the Complainant’s marks as to the source, sponsorship, affiliation, or endorsement of the Respondent’s webpage.

Based on all the above, the Panel finds that the Complainant has established also paragraph 4(a)(iii) 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, <bayer-belgium.com>, be transferred to the Complainant.

*/Anna Carabelli/*

**Anna Carabelli**

Sole Panelist

Date: July 31, 2023