



#### **4. Factual Background**

The Complainant is the IP holding company of Bayer AG, a global enterprise with core competencies in the fields of healthcare, nutrition, and plant protection. Bayer AG is presented by over 374 consolidated companies in 83 countries and has more than 99,000 employees worldwide. Bayer AG's stock is included in nearly all the major share indices, traded on all German stock exchanges and included in the DAX 40, a Blue-Chip stock market index consisting of the 40 major German companies trading on the Frankfurt Stock Exchange.

The Complainant, together with its subgroups, does business on all five continents, manufacturing and selling numerous products, *inter alia* pharmaceutical and medical care products, diagnostic products, and agricultural chemicals.

The product Levitra is a prescription medicine that is used to treat erectile dysfunction, which is marketed by the Complainant since March 2003. The product is sold in numerous countries worldwide, such as the United States of America (the "United States"), Mexico, Brazil, France, Spain, Ireland, Italy, Australia, Kuwait, Republic of Korea, Israel, Taiwan Province of China, and Hong Kong, China.

The Complainant owns numerous trademark registrations for LEVITRA, such as the following:

- the United States registration number 3050814 for LEVITRA, filed on February 3, 2005, and registered on January 24, 2006, covering goods in Nice class 5; and
- the Malaysian trademark registration number 00006988 for LEVITRA, registered on June 2, 2000, covering goods in Nice class 5.

The Complainant holds domain names incorporating the LEVITRA mark such as <levitra.com>.

The disputed domain name <levitraebuy.com> was registered on June 25, 2019, and at the time of filing the Complaint, it did not resolve to an active website.

According to Annex 7 of the Complaint, the disputed domain name was used in connection with a website purportedly offering unauthorized LEVITRA branded products for sale, and featuring a reproduction of the Complainant's flame logo, also registered as trademark in numerous countries and which is used by the Complainant in connection with the sale of its Levitra products.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademark LEVITRA which is formed of the mark with non distinctive terms, "e" and "buy"; that the Respondent has no rights or legitimate interests in the disputed domain name; and that the Respondent registered and is using the disputed domain name in bad faith for a website used for offering unauthorized LEVITRA branded products for sale.

##### **B. Respondent**

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

## 6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

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

The Panel will further analyze the potential concurrence of the above circumstances.

### A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms here, "e" and "buy", may bear on assessment of the second and third elements, the Panel finds the addition of such terms do not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

### B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Furthermore, the composition of the disputed domain name carries a risk of implied affiliation. [WIPO Overview 3.0](#), section 2.5.1.

The disputed domain name used to resolve to a website marketing LEVITRA marked pharmaceutical products and displaying the Complainant's flame logo associated with LEVITRA, without any disclaimer or authorization from the Complainant. Even if the products were genuine, the lack of any disclaimer on the website at the disputed domain name would falsely suggest to Internet users that the website to which the disputed domain name resolved is owned by the Complainant or at least affiliated to the Complainant.

Based on the available record, the Panel finds the second element of the Policy has been established.

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

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark particularly because the Complainant's LEVITRA trademark is registered since 2000, used starting 2003 and has become well known worldwide.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location is evidence of registration and use in bad faith.

According to the evidence provided in the Annex 7 of the Complaint and unrefuted by the Respondent, prior to the present proceeding, the disputed domain name was used in connection with a website selling products marked with LEVITRA. Given that the disputed domain name incorporates the Complainant's well-known trademark together with terms, "e" and "buy", the website operated under the disputed domain name displayed the Complainant's LEVITRA mark and logo, photo of official products, and has no disclaimer, the Panel finds that the Respondent intended to attract Internet users accessing the website corresponding to the disputed domain name who may be confused and believe that the website is held, controlled by, or somehow affiliated or related to the Complainant, for its commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

At the time of filing the Complaint, the disputed domain name resolved to an inactive page.

UDRP panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or 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) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the misleading domain name may be put. [WIPO Overview 3.0](#), section 3.3.

The Panel notes the distinctiveness and international reputation of the Complainant's trademark; the composition of the disputed domain name; the Respondent's failure to provide a response in this procedure; the Respondent's use of a privacy service and provision of inaccurate or incomplete contact details when registering the disputed domain name, and finds that, in the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <levitraebuy.com> be transferred to the Complainant.

*/Marilena Comanescu/*

**Marilena Comanescu**

Sole Panelist

Date: September 5, 2023