

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Sergiy Zaslavsky
Case No. D2024-0593

1. The Parties

The Complainant is Bayer AG, Germany, represented by pm.legal, Germany.

The Respondent is Sergiy Zaslavsky, Canada.

2. The Domain Name and Registrar

The disputed domain name <bayer-co.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 8, 2024. On February 9, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 9, 2024, 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, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 12, 2024, 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 February 18, 2024.

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 February 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 12, 2024.

The Center appointed Daniel Kraus as the sole panelist in this matter on March 15, 2024. 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 one of the world's leading chemical and health care companies, which has its headquarters in Leverkusen, Germany.

The Complainant is the owner of about 700 registrations and pending applications of the word mark BAYER. Amongst others:

- International trademark Registration BAYER No. 1462909 registered on November 28, 2018, for the following goods/services 1, 3, 5, 9, 10, 31, 35, 41, 42, and 44;

- International trademark Registration BAYER No. 1476082 registered on December 10, 2018, for the following goods/services 7, 8, 11, 16, 20, 24, 25, 28, 30, 32, 37, 38, 39, 40, 43, and 45.

Moreover, the Complainant has also established a strong presence on the Internet; it is the owner, among others, of the following domain names reflecting its trademark: <bayer.com>, <bayer.co.nz>, <bayer.com.au>, <bayer.co>.and <bayer.us>.

The disputed domain name was registered on November 17, 2023, and at the time of filing was not used in connection with an active website. The Complainant, however, became aware that the disputed domain name has been fraudulently used to send an email to one of the Complainant's customers. Other than this information itself, the Complainant has not been able to obtain any further information about this fraudulent attempt.

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 almost identical to the Complainant's trademark BAYER which has become a distinctive identifier of its service offerings.

The Complainant argues that the only element of difference between the disputed domain name and the Complainant's trademark is the additional letters "co" in the disputed domain name. This element can mislead Internet users, since the disputed domain name is nearly identical to the Complainant's trademark.

The Complainant also contends that the Respondent has no rights or legitimate interest in respect of the disputed domain name. The Respondent is not affiliated with the Complainant and there is no evidence to suggest that the Respondent has registered the disputed domain name to advance legitimate interests. The Complainant has never licensed or otherwise permitted the Respondent to use its trademark or to register any domain name including its trademark.

Finally, the Complainant alleges that the Respondent has registered the disputed domain name in bad faith. "Bayer" is obviously not a word a domain name registrant would legitimately choose unless seeking to create an impression of association with the Complainant. Given the Complainant's worldwide recognition and the fact that the Complainant actively uses the domain name <bayer.co>, which is very similar to the disputed domain name, to direct Internet users to its website at "https://www.bayer.com/es/co/andina-y-cac-home, which is aimed at Andean, Central American and Caribbean customers", it is inconceivable that the Respondent registered the disputed domain name without knowledge of the Complainant and its rights in its BAYER trademarks. Besides, the Complainant contends that the disputed domain name is being used in bad faith, as it is being used in connection with fraudulent emails.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed the Complainant must prove that:

- (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 was registered and is being used in bad faith.

These elements are discussed in turn below. In considering these elements, paragraph 15(a) of the Rules provides that the Panel shall decide the Complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the Panel deems applicable.

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.

In the present case, the disputed domain name is confusingly similar to the Complainant's registered well-known trademark BAYER. The disputed domain name incorporates the BAYER trademark in its entirety, to which a hyphen and the term "co" has been added. It is understood that when a disputed domain name fully incorporates a complainant's mark, it is indicative of the disputed domain name being identical or confusingly similar. The addition of the hyphen and the term "co" to the Complainant's trademark, does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. [WIPO Overview 3.0](#), section 1.8.

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to the Complainant's mark.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

There is nothing in the available case file to suggest that the Respondent is in any way affiliated with the Complainant, nor has the Complainant authorized or licensed the Respondent to use its trademarks, or to seek registration of any domain name incorporating its trademarks.

The Respondent has not made any submissions or any demonstrations that it has rights or legitimate interests in the disputed domain name.

In the present case, the Panel finds no evidence that the Respondent has used or undertaken any demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services. Likewise, no evidence has been adduced that the Respondent has been commonly known by the disputed domain name; nor, for the reasons mentioned above, is the Respondent making a legitimate noncommercial or fair use of the disputed domain name.

The Panel concludes, noting that the Respondent lacks any rights or legitimate interests in the disputed domain name, that the second element of the Policy has been met.

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 Complainant contends that the Respondent's registration and use of the disputed domain name is in bad faith, which the Respondent did not rebut. On the evidence adduced, it is inconceivable that the registrant of the disputed domain name was unaware of the Complainant's name, trademark, reputation, and goodwill when the disputed domain name was registered. In *The Nasdaq Stock Market, Inc., v. Hamid Reza Mohammad Pouran*, WIPO Case No. [D2002-0770](#), the panel held: "The Respondent knew or should have known of the existence of the Complainant, [as] the Complainant's trademark [was] widely publicized globally and constantly featured throughout the Internet, and thus the Panel decides that the disputed domain names were registered in bad faith". This is also the case here. Besides, the fact that the Complainant actively uses the domain name <bayer.co> in Latin America supports this conclusion.

The Complainant has also asserted that the disputed domain name has been used, at least in one case to send a fraudulent mail and hence, in bad faith, to which has not been rebutted by the Respondent. This demonstrates a sufficiently clear intent of the Respondent to attract Internet users, for commercial gain, by creating a likelihood of confusion with the Complainant's trademarks and domain names (Policy, paragraph 4(b)(iv)).

Accordingly, this Panel finds that disputed domain name was registered and has been used in bad faith by the Respondent. On this basis the Panel finds that the Complainant has satisfied the third element of the Policy, paragraph 4(a)(iii).

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-co.com> be transferred to the Complainant.

/Daniel Kraus/

Daniel Kraus

Sole Panelist

Date: March 29, 2024