

ADMINISTRATIVE PANEL DECISION

Bayer AG v. Stobart Mike
Case No. D2024-4393

1. The Parties

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

The Respondent is Stobart Mike, United States of America.

2. The Domain Names and Registrar

The disputed domain names <bayer-nl.com> and <nl-bayer.com> (collectively, the “Disputed Domain Names”) are registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 25, 2024. On October 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Names. On October 28, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Disputed Domain Names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 30, 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 November 4, 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 November 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 28, 2024.

The Center appointed Rosita Li as the sole panelist in this matter on December 4, 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 a publicly traded global enterprise with core competencies in the fields of health care, nutrition and plant protection, with its headquarters in Leverkusen, Germany. The company name “Bayer” has been used by the Complainant since 1863 when the Complainant was established, and the Complainant’s pharmaceutical products have been marketed and sold under the BAYER trademark since 1888. The Complainant is represented by over 350 consolidated companies in 80 countries and has more than 99,000 employees globally.

The Complainant is the owner of over 700 trademark registrations and pending applications of the word mark BAYER covering an extensive range of goods and services. The Complainant’s trademark registrations include the following:

- 1) International Trademark Registration No. 1462909 for BAYER, registered on November 28, 2018; and
- 2) International Trademark Registration No. 1476082 for BAYER, registered on December 10, 2018.

(collectively, the “BAYER Trademarks”).

The Complainant submitted that it maintains a strong presence on the Internet, as the Complainant and its subsidiaries own hundreds of domain name registrations containing the BAYER Trademarks, including <bayer.com>, <bayer.co.nz>, <bayer.com.au>, <bayer.co>, <bayer.be>, and <bayer.us>. The Complainant’s online use of the BAYER Trademarks has led to the obvious and sole connection with the Complainant.

The Complainant further submitted that as a result of the exclusive and extensive use of the BAYER Trademarks, the Complainant has acquired significant goodwill in the BAYER Trademarks. Previous decisions rendered under the UDRP in the past 20 years have also found that the BAYER Trademarks are well known.

The Disputed Domain Names were registered on September 3, 2023.

As of the date of filing the Complaint, the Disputed Domain Names were inactive. However, the Complainant was aware that the Disputed Domain Names were previously used to issue fake job offers in the Complainant’s name.

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 Names. A summary of the Complainant’s submission is as follows:

(i) The Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant contends that:

- the BAYER Trademarks will be clearly recognized by Internet users within the Disputed Domain Names, which will sufficiently establish the element of confusing similarity;

- the letters “nl” in the Disputed Domain Names do not sufficiently distinguish the Disputed Domain Names from the BAYER Trademarks;

- the use of the “nl”, which is a geographic identifier commonly understood as “The Netherlands [Netherlands (Kingdom of the)]”, will confuse Internet users when used in combination with the BAYER Trademarks.

(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. The Complainant contends that:

- the Bayer Trademarks are well known and obviously connected with the Complainant and its products;

- the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating the BAYER Trademarks;

- the Respondent is not using the Disputed Domain Names to make bona fide offerings of goods or services, particularly evidenced by the Respondent’s issuance of fraudulent emails using email addresses incorporating the Disputed Domain Names; and

- the Respondent is not making a legitimate noncommercial or fair use of the Disputed Domain Names or is commonly known by the names “BAYER-NL” and/or “NL-BAYER”.

(iii) The Disputed Domain Names were registered and are being used in bad faith. The Complainant contends that:

- the term “Bayer” is not one that a domain name registrant would legitimately choose unless seeking to create an impression of association with the Complainant;

- the Complainant’s high profile worldwide and the Respondent’s deliberate targeting of the Complainant by using its famous Bayer Cross suggest that the Respondent registered the Disputed Domain Names with knowledge of the Complainant and its rights in the highly distinctive and well-known BAYER Trademarks;

- the Disputed Domain Names are used in connection with the Respondent’s fraudulent activities;

- the registration of the Disputed Domain Names prevents the Complainant from reflecting its trademarks in corresponding domain names;

- the registration of the Disputed Domain Names includes a trademark that is obviously connected with the Complainant and its products;

- the Respondent’s use of the Disputed Domain Names is qualified to disrupt the Complainant’s business and is capable of reducing the number of visitors to the Complainant’s website, adversely affecting the Complainant’s business; and

- the registration of the Disputed Domain Names constitutes an abusive threat hanging over the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must satisfy each of the following three elements in a complaint:

- (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.

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 names. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.7.

The Complainant has shown rights with respect to a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the BAYER Trademarks is reproduced within the Disputed Domain Names. Accordingly, the Disputed Domain Names are confusingly similar to the BAYER Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#) section 1.7.

Although the addition of other terms, in this case, "nl", may bear on the assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the Disputed Domain Names and the BAYER Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

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.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Names. 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 Names such as those enumerated in the Policy or otherwise.

In accordance with [WIPO Overview 3.0](#), section 2.5.1, UDRP panels have largely held that domain names identical to a complainant's trademark carry a high risk of implied affiliation. Even if the domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. In this case, the Panel is satisfied that the BAYER Trademarks are well known and connected with the Complainant and its products. The Disputed Domain Names included the Complainant's BAYER Trademarks in its entirety, and the additional term "nl" creates the likelihood of confusion, which may mislead Internet users into thinking that the Disputed Domain Names are connected with the Complainant.

Panels have held that the use of a domain name for illegal activity, where the Respondent fraudulently used the Disputed Domain Names to send scam emails, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. The Panel noticed that the Disputed Domain Names were previously used by the Respondent to issue fake emails to job applicants attempting to obtain personal information from email recipients. By identifying itself as the Complainant's assistant Human Resource Manager and prominently featuring the Complainant's Bayer Cross in the emails, the Respondent falsely associated with the Complainant and impersonated the Complainant.

The Panel is of the view that the use of the Disputed Domain Names, which incorporates the BAYER Trademarks in its entirety, is an attempt by the Respondent to capitalize on the goodwill and reputation of the BAYER Trademarks, which the Panel considers not to be for a legitimate noncommercial or fair use of the Disputed Domain Names.

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.

The Panel notes that the Complainant has registered the BAYER Trademarks prior to the registration of the Disputed Domain Names on September 3, 2023. The Complainant has provided supporting documents to show that the BAYER Trademarks are well known and reputable amongst the general public, including the Complainant's inclusion on major share indices, listing on all German stock exchanges, recognition in various categories as a world-leading company, and maintaining a strong presence on the Internet. The Panel accepts that the Complainant has been continuously using its BAYER Trademarks and finds that it would not be plausible for the Respondent to claim that it was unaware of the Complainant and the BAYER Trademarks, particularly considering the Respondent's impersonation of the Complainant when sending fraudulent emails. The Panel is prepared to find that the Respondent knew that the registration of the Disputed Domain Names would be confusing to the BAYER Trademarks. [WIPO Overview 3.0](#), section 3.2.2. Accordingly, the Panel finds that the Respondent's registration of the Disputed Domain Names, which are confusingly similar to the BAYER Trademarks, which are well known and registered earlier, is a clear indication of bad faith.

Panels have held that the use of a domain name for illegal activity, where the Respondent fraudulently used the Disputed Domain Names to send scam emails, such as sending deceptive emails to prospective job applicants, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. As elaborated in the previous section 6.B, the Respondent fraudulently used the Disputed Domain Names by issuing fake job offers in the Complainant's name attempting to obtain personal information from email recipients.

Having reviewed the available record, the Panel notes that the Complainant has provided sufficient evidence to the satisfaction of the Panel that the Respondent impersonated the Complainant by using the email addresses "[...@bayer-nl.com]" and "[...@nl-bayer.com]" that incorporate the BAYER Trademarks, as well as including the Complainant's Bayer Cross and the address of the Complainant's Dutch site in the email. In view of this, the Panel is of the view that the Respondent has registered and used the Disputed Domain Names in bad faith.

Based on the available record, the Panel finds that 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 Names <bayer-nl.com> and <nl-bayer.com> be transferred to the Complainant.

/Rosita Li/

Rosita Li

Sole Panelist

Date: December 18, 2024