



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300493
Complainant:	Bayer Aktiengesellschaft
Respondent :	Xiao Zhang

1. The Parties and Contested Domain Name

The Complainant is Bayer Aktiengesellschaft, of D-51386 Leverkusen, Germany (hereinafter referred to as “Complainant”).

The Respondent is Xiao Zhang, of Nanjing, China 053333 (hereinafter referred to as “Respondent”).

The domain name at issue is <bayer-pur.com>, registered by Respondent with Go-Daddy.com LLC, of 14455 N. Hayden Road, Suite 226, Scottsdale, Arizona, United States of America (hereinafter referred to as the “Registrar”).

2. Procedural History

On 23 April 2013 Complainant filed the Complaint in this matter concerning the domain name at issue. On that same date The Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the “Centre”) notified the Registrar of the filing of the complaint and requested that the Registrar confirm that the domain name at issue was registered with the Registrar, that the identified Respondent is the registrant of the domain name, and that the Registrar had received a copy of the Complaint. Also on that same date the Centre sent the Complainant an Acknowledgement of Receipt of Complaint. On 24 April 2013 the Registrar notified the Centre that the domain name at issue had been registered to the identified Respondent, that the language of the registration agreement was English, and that the Registrar had not received a copy of the Complaint. Also on 24 April 2013, the Complainant notified the Centre that the fee required for filing a Complaint with the Centre had been paid.

On 2 May 2013 the Centre acknowledged receipt of the filing fee. On 3 May 2013 the Centre notified Complainant that the domain name registration had been locked and requested that Complainant send a copy of the Complaint to the Registrar. On 6 May 2013 the Complainant notified the Centre that the Complaint had been sent to the Registrar. On 13 May 2013 the Centre confirmed that it had received a copy of the registration agreement and inquired of the Complainant whether the Complainant had sent a copy of the Complaint to the Respondent. On 13 May 2013 the Complainant transmitted to Respondent a copy of the Complaint with annexes.

On that same date the Complainant confirmed to the Centre transmission of the Complaint with annexes to the Respondent.

On 14 May 2013 the Centre transmitted to the Respondent an additional copy of the Complaint with annexes and a Notice of Commencement of the Proceedings in which the Centre informed the Respondent that any Response to the Complaint must be filed no later than 3 June 2013. On 4 June 2013, not having received a Response to the Complaint, the Centre notified the parties of the Respondent's default.

On 7 June 2013 the Centre appointed M. Scott Donahey as the sole panelist in conformity with the Policy and the Rules. As the registration agreement was in the English language, the Panel finds that the language of the proceedings is English. Uniform Rules, Rule 7(a).

3. Factual background

The Complainant is an international manufacturer and purveyor of a great range of products headquartered in Leverkusen, Germany, and has operated in China since 1882. It currently employs more than 11,000 people in China. Among its operations in China is a plant which manufactures polyurethane, established in 1999. Polyurethane is also known by the English shorthand, "PUR." Complainant has trademark rights in the mark BAYER dating back at least to 1999 in China and its BAYER mark is well established throughout the world.

Respondent registered the domain name at issue on 24 January 2013. Respondent uses the domain name at issue to resolve to a web site that is identical to that of Complainant with the single exception that Respondent substitutes Respondent's telephone number for that of Complainant. One of Respondent's employees has conducted an email campaign pursuant to which the employee claims to be a representative of Complainant and promotes business for Respondent.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

Complainant contends that the domain name at issue is confusingly similar to its famous BAYER mark, that Respondent has no rights or legitimate interests in respect of the domain name, and that Respondent has registered and is using the domain name in bad faith.

B. Respondent

The Respondent has failed to respond to the allegations of the Complainant.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

Complainant is the registrant of the famous BAYER trademark, known throughout the world, and whose registrations of the mark in China date at least to 1999 and whose operations in China date back to 1882. Respondent, a resident of China, registered the domain name at issue in 2013. The domain name at issue incorporates in its entirety Complainant's famous BAYER mark, adding only a hyphen and the English shorthand "PUR" which refers to Complainant's invention and current product, polyurethane. Where the name of a product is added to a trademark in a domain name, panels have long held that the domain name is confusingly similar to the trademark. *Gateway, Inc. v. Bellgr, Inc.*, WIPO Case No. D2000-0129 (<gateway-computer.com>); *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. D2000-0187 (<weber-grill>, et al). Accordingly, the panel finds that the domain name at issue is confusingly similar to Complainant's trademark.

B) Rights and Legitimate Interests

The consensus view of WIPO panelists concerning the burden of establishing no rights or legitimate interests in respect of the domain name is as follows:

While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out an initial *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview, 2.0"), Section 2.1.

As there are WIPO panelists among the panelist in the ADNDRC, and as there are ADNDRC panelists among the panelists in WIPO, as this panelist is a member of both panels, and as all panelists are interpreting the same Rules and Policy, this panelist believes that the consensus view of WIPO panelists is equally applicable at the ADNDRC.

In the present case the Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain name and Respondent has failed to assert any such rights. Accordingly, the panel finds that Respondent has no rights or legitimate interests in respect of the domain names at issue.

C) Bad Faith

In the present case, the Respondent is using the domain name at issue to resolve to a web site that is identical to that of the Complainant, with the single exception that the Respondent has substituted Respondent's telephone number for that of Complainant. In addition, an employee of Respondent has purported to be an agent of the Complainant in order to generate business for

Respondent. The panel finds that such conduct falls clearly within paragraph 4(b)(iv) of the Policy which defines such conduct as bad faith registration and use. Accordingly, the Panel finds that the Respondent has registered and is using the domain name at issue in bad faith.

6. 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-pur> be transferred to the Complainant.

M. Scott Donahey
Panelist

Dated: 10 June 2013