ADMINISTRATIVE PANEL DECISION
Case No. DCN-1500631

Complainant: Bayer AG
Respondent: 霍改珍 (HUO Gai Zhen)
Domain Name: <bayercropscience.com.cn>
Registrar: 北京光速连通科贸有限公司 (Beijing Chinast Ltd.)

1. Procedural History

The Complainant is represented in these administrative proceedings by Mr. Peter Müller of BPM Legal, Munich, Germany.

The Complaint was filed with the Hong Kong International Arbitration Centre ('Centre') on 19 June 2015 in relation to the disputed domain name. On the same day, the Centre transmitted by email to the Registrar, Beijing Chinast Ltd., a request for verification of the registered particulars of the disputed domain name <bayercropscience.com.cn>.

On 24 June 2015, the Registrar replied to the Centre by email, advising that the disputed domain name <bayercropscience.com.cn> had been locked, thereby prohibiting further transfer of the domain during the pendency of these proceedings. The Registrar identified the Respondent, HUO Gai Zhen (霍改珍), as the Registrant of the disputed domain name.

The Centre confirmed that the Complaint satisfied the formal requirements of the CNNIC ccTLD Dispute Resolution Policy ('CNDRP') issued by the China Internet Network information Center ('CNNIC'); the CNNIC ccTLD Dispute Resolution Policy Rules ('Rules of the CNDRP'); and the HKIAC Supplemental Rules for CNDRP and Rules of CNDRP ('Supplemental Rules') issued by the Centre; respectively, each of which became effective on 21 November 2014.

On 25 June 2015, in accordance with Articles 5 and 14 of the Rules of the CNDRP and Article 5(3) of the Supplemental Rules, the Centre formally notified the Respondent of the Complaint. These proceedings commenced. In accordance with Article 17 of the Rules of the CNDRP, the due date for the Respondent's Response was 15 July 2015.

No Response was submitted to the Centre by the Respondent in relation to the disputed domain name, whereupon, the Centre sent a Notice of Default to the parties by email on 16 July 2015.
The Centre appointed David L. Kreider as the sole panelist in this matter on 16 July 2015. 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 Centre to ensure compliance with Article 9(2) of the Supplemental Rules.

At Section V of the Complaint, the Complainant requests that English be used, exceptionally, as the language of these proceedings. The Complainant argues as grounds that the Complainant is located in Germany and has no knowledge of the Chinese language, and that the cost of retaining specialized translation services would impose a relatively significant burden on the Complainant, given the nature of these administrative proceedings, which are intended to be speedy and low cost. The Complainant cites as additional grounds that the disputed domain name resolves to an English language website; that the disputed domain name is itself written in English; that the Respondent is the registered owner of other domain names that incorporate common English words; and that the Respondent entered into an exchange of email correspondence with the Complainant in English concerning the possible purchase and sale of the disputed domain name; and that it is reasonable to infer from these facts that the Respondent is familiar with the English language.

This Panelist notes that the Centre has provided copies of all correspondence and notices relative to these proceedings to the Respondent in both Chinese and English, and yet the Respondent has not submitted a Response after having been afforded an opportunity to do so.

Having considered all the circumstances of these proceedings, the Panel finds merit in the Complainant’s request and decides, as an exception to the general mandate of Article 6 of the CNDRP and Article 8 of the Rules of the CNDRP, that the instant proceedings shall be conducted in English, rather than in Chinese.

2. **Factual background**

The Complainant is a global enterprise with core competencies in the fields of health care, nutrition and high-tech materials. Global headquarters are in Leverkusen, Germany. The Complainant’s stock is included in nearly all the major share indices, traded on all German stock exchanges and included in the DAX 30, a Blue Chip stock market index consisting of the 30 major German companies trading on the Frankfurt Stock Exchange.

The company name BAYER dates back to 1863, when the firm of “Friedrich Bayer & Co.” was established in the town of Elberfeld, now part of the city of Wuppertal in Germany. In 1881, the name was transferred to a stock corporation called “Farbenfabriken vorm. Friedrich Bayer & Co.”. This company began manufacturing and marketing pharmaceutical products in 1888, and has sold such products under the BAYER trademark ever since that time.

The Complainant is represented by over 250 affiliates and has more than 113,000 employees worldwide. The Complainant, itself or through subgroups like HealthCare, CropScience and MaterialScience, does business on all five continents, manufacturing and selling numerous of products, inter alia human pharmaceutical and medical care
products, veterinary products, diagnostic products, agricultural chemicals and specialty polymers. The Complainant provides information on its subgroup CropScience online inter alia at http://www.cropsience.bayer.com (English) and http://www.cropsience.bayer.com.cn (Chinese). The Complainant’s CropScience products are researched and marketed through the Complainant’s subsidiary Bayer CropScience AG, a corporation incorporated under the laws of Germany with principal place of business in Monheim am Rhein, Germany, as well as through the Complainant’s subsidiary Bayer (China) Ltd. of Shanghai, China. The term “Bayer Cropscience” is solely connected with the Complainant and its subsidiaries.

The Complainant is the owner of about 700 registrations and pending applications of the mark “BAYER” alone, including some 25 registrations in China. The Complainant’s registrations cover an extensive range of goods and services. Furthermore, the Complainant has a strong presence on the Internet. The Complainant and its subsidiaries own hundreds of domain name registrations containing the BAYER Marks, including <bayer.com>, <bayer.com.cn>, <bayer.de>, and <bayer.org>.

As a result of the exclusive and extensive use, the Complainant’s BAYER Marks have acquired a significant goodwill and are widely known. Previous decisions decided under the UDRP have already found that the Complainant’s BAYER Marks are well known.

3. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

The disputed domain name was registered on 8 May 2014 and is used in connection with a ‘click-through’ domain ‘parking’ website related to the Complainant and its products as well as third parties’ products. In addition, the disputed domain name is offered for sale on the Respondent’s website for an unspecified price. When the Complainant inquired as to the asking price of the disputed domain name, the Respondent replied in an English language email on 12 May 2015, inviting the Complainant to submit its offer.

B. Respondent

The Respondent’s contentions may be summarized as follows:

The Respondent failed to submit a Response to the Complaint within the specified time period.

4. Findings

As to the case, Article 8 of CNDRP provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:
i. The disputed domain name is identical with or confusingly similar to the Complainant’s name or mark in which the Complainant has civil rights or interests;

ii. The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;

iii. The disputed domain name holder has registered or has been using the domain name in bad faith.

Article 7 of CNDRP states that the complainant and the respondent shall bear the burden of proof for their own claims. With reference to the complaint and the attached documents, the Panel of this case considers that:

**Identical or Confusing Similarity**

The disputed domain name consist of the Complainant’s famous BAYER Marks and the words “Crop” and “Science”, which supports a finding of confusing similarity, as this combination creates the impression that the disputed domain name is related to or endorsed by the Complainant or its subsidiary Bayer CropScience AG.

The Panel finds that disputed domain name is confusingly similar to the BAYER Marks and is identical to the name of the Complainant’s subsidiary Bayer CropScience AG.

**Rights or Legitimate Interests of the Respondent**

The name “Bayer CropScience” is highly distinctive and obviously connected with the Complainant and its products and is not a word any market participant or other domain registrant would legitimately choose unless seeking to create an impression of an association with the Complainant. The Complainant has alleged that it 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 Marks. The Respondent, on its part, has defaulted and has filed no Response in these proceedings.

The Respondent has not used the disputed domain name, or a name corresponding to the domain name, in connection with a *bona fide* offering of goods or services. In particular, the Respondent’s use of the disputed domain name in connection with a website to generate pay-per-click revenue is not a *bona fide* use under the Policy.

The Panel finds that the Respondent has no legitimate right or interest in respect of the disputed domain name or the major part of the domain name.

**Bad Faith**

The Complainant argues, and this Panelist finds on the evidence, that bad faith registration or use of the disputed domain name is established by the fact that the disputed domain name clearly refers to the Complainant’s subgroup “CropScience” and that the term “Bayer CropScience” is not found in the daily use of language. The only reason that anyone could conceivably have for registering such well-known marks is to obtain unjust benefits, i.e., to trade upon the good will developed over time by the mark owner, the Complainant.
Any doubt as to the Respondent’s bad faith registration or use of the disputed domain name is removed by the written evidence showing that the Respondent has put the disputed domain name up for sale on its website. The Respondent has, without the authorization or approval of the Complainant, registered and used the disputed domain name and the website to which the name resolves, to capitalize on the reputation of the BAYER Marks to gain ‘pay-per-click’ revenue. Finally, the Complainant has provided persuasive evidence that the Respondent is engaged in a pattern of such bad faith conduct and has registered numerous domain names for monetization and/or cybersquatting purposes.

5. Decision

The Panel orders that the disputed domain name <bayercropscience.com.cn> be transferred to the Complainant.

Panelist: David L. Kreider, Esq.

Date: 17 July 2015