Decision for dispute CAC-UDRP-101065

Case number	CAC-UDRP-101065
Time of filing	2015-09-15 11:58:00
Domain names	BOEHRINGER-INGELHEIM.XYZ

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	BOEHRINGER Ingelheim Pharma GmbH & Co. KG

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	DOMAIN

OTHER LEGAL PROCEEDINGS

None of which the Panel is aware.

IDENTIFICATION OF RIGHTS

The Complainant has numerous registered trademarks, including International trademark No. 221544 “Boehringer-Ingleheim”, registered on July 2, 1959.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a member of a group of companies founded in 1885. It is a global research-driven pharmaceutical enterprise engaged in human pharmaceuticals and animal health. In 2013, group net sales amounted to about EUR 14.1 billion.

The Complainant owns a portfolio of brands including the word “Boehringer” and “Boehringer Ingleheim” in several countries.

The Domain Name was registered by the Respondent on August 14th, 2015. It resolves to a single-page website headed BOEHRINGER-INGELHEIM.XYZ IS FOR SALE and seeking "Your offer" in US dollars.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision. In particular, the Panel is satisfied that the CAC has discharged its responsibility under § 2(a) of the Rules in effect as of July 31, 2015 to employ reasonably available means calculated to achieve actual notice of the Complaint to Respondent.

PRINCIPAL REASONS FOR THE DECISION

The Complainant contends that the Domain Name is confusingly similar to its trademarks and that the Respondent has no rights or legitimate interests in the Domain Name, which was registered and is being used in bad faith.

As to legitimacy, the Complainant says the Respondent is not related in any way with the Complainant, which does not carry out any activity for, nor has any business with the Respondent. The Complainant has neither licensed nor authorized the Respondent to make any use or apply for registration of the Domain Name. The Respondent has no legitimate interests in respect of the Domain Name and has registered it only for the purpose of sale.

As to bad faith, the Complainant says it is highly unlikely that the Respondent had no knowledge of Complainant’s company name and legal rights to its well-known trademark BOEHRINGER INGELHEIM® at the time of registration of the Domain Name, considering its notorious status and success in the pharmaceutical field.

Given the distinctiveness of the Complainant's trademarks and reputation, the Complainant says the Respondent has registered the Domain Name with full knowledge of the Complainant's trademarks. Further, the Domain Name has been on sale since its registration. The Respondent has registered and used the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name with the sole purpose of selling it.

In support of its contentions the Complainant makes reference to WIPO Cases Nos. D2006-0459 Boehringer Ingelheim Pharma GmbH & Co. KG v. Reps, Inc. and D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA.

PANEL FINDINGS

A respondent is not obliged to participate in a proceeding under the Policy but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the Complainant. See Reuters Limited v. Global Net 2000, Inc., WIPO Case No. D2000-0441.

The Domain Name is identical to the Complainant's BOEHRINGER-INGELHEIM mark, since it fully incorporates the

Complainant's trademark “Boehringer-Ingleheim” and the specific top level of the Domain Name “.xyz”, is irrelevant for the purpose of determining identity or confusingly similarity: Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525.

As to legitimacy, the Complainant's BOEHRINGER-INGELHEIM mark is distinctive and very well known. The Complainant’s assertions are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in the Domain Name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name: Do The Hustle, LLC v. Tropic Web, WIPO Case No. D2000-0624 and the cases there cited. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Domain Name.

As to bad faith, since the Complainant's trademarks are very well known, the Respondent must have had the Complainant in mind when registering the Domain Name. From the screenshot of the Respondent's website exhibited by the Complainant, it appears the only use to which the Domain Name has been put since registration has been to seek to sell the Domain Name. Under these circumstances, even though it may not be possible to conclude that the Respondent intends to sell to the Complainant or to a competitor of the Complainant, as contemplated in paragraph 4(b)(i) of the UDRP, the Panel finds that the Domain Name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **BOEHRINGER-INGELHEIM.XYZ**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2015-10-19

Publish the Decision