

## Decision for dispute CAC-UDRP-101283

Case number CAC-UDRP-101283

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Time of filing 2016-08-26 12:02:44

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Domain names goehringer.xyz

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### Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

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### Complainant

Organization BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

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### Complainant representative

Organization Nameshield (Maxime Benoist)

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### Respondent

Name Bartosz Kordynski

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#### IDENTIFICATION OF RIGHTS

The Complainant owns numerous trademarks and domain names including the word "BOEHRINGER", in several countries. Among others, the Complainant owns the international trademark BOEHRINGER® number 799761 registered on December 2, 2002. This trademark is also registered in the Trademark Clearinghouse since April 17, 2014.

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#### FACTUAL BACKGROUND

The Respondent has registered and is using the domain in question for a domain parking website. The disputed domain name was registered on June 1, 2016 (i.e. the Complainant's trademarks predate the registration of the disputed domain name). There are no links or other references to third parties on the website. The website simply states "Welcome to goehringer.xyz. This name was just registered on Uniregistry.com. Want your own domain name? With new generic domain extensions like .link, .gift, .pics and .sexy, you have millions of new possibilities. Search for your new name below. ".

The Complainant has sent a cease-and-desist-letter to the Respondent. The Respondent did not react. The Complainant held that the behaviour of the Respondent is a clear case of typosquatting.

The Complainant contends that the domain name is confusingly similar to the trademarks "BOEHRINGER" registered by the Complainant as Trademarks, domain names and Trademark clearinghouse. The Complainant contends that the Respondent could not have ignored the Complainant's trademark at the moment of the registration of disputed domain name and has

registered the disputed domain name in order to deprive the Complainant of the ability to register its trademark as domain name.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### RIGHTS

There are some doubts whether 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). To determine insofar the likelihood of Internet user confusion, the relevant trademark would generally need to be recognizable as such within the domain name (F. Hoffmann-La Roche AG v. P Martin, WIPO Case No. D2009-0323, <alli-xenical.com>).

The domain in question has in itself no sufficient similarity with the trademark of the Complainant. "Boehringer" and "Goehringer" are two different names. A short search in the web shows that there are a lot of companies which are named "Goehringer". Furthermore, the Respondent has merely registered the domain in question for a domain parking website up to now. There are no links or other references from the website to competitors of the Complainant or any object which might have any relation with the Complainant and his business. There is thus no risk that Internet users may actually believe there to be a real connection between the domain name and the complainant and/or its goods and services.

However, the similarity test needs not to be discussed further in detail as there are other grounds for rejecting the complaint.

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#### NO RIGHTS OR LEGITIMATE INTERESTS

It can be presumed that the Respondent has not shown rights or legitimate interests in the domain. Paragraph 4(c) of the Policy shifts the burden to the Respondent to come forward with evidence of a right or legitimate interest in the Domain Name, once the Complainant has made a prima facie showing indicating the absence of such rights or interests. See, e.g., Document Technologies, Inc. v. International Electronic Communications Inc., WIPO Case No. D2000-0270. as the Respondent has not answered to the Complaint, no rights or legitimate interests can be found in his favour. In that regard it should be noted that the Panel finds that the Complainant's mark is distinctive. The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed 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. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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#### BAD FAITH

However, there are no indications that the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). In general, the behaviour of the Respondent resembles the so-called "passive holding". In that regard, all the circumstances of the case are to be examined in order to determine whether the Respondent is acting in bad faith (See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). However, the invoked Telstra decision is no authority for the idea that passive holding of a domain name will always be proof that the third element of the Policy is satisfied. In Telstra decision, the fact of clear bad faith registration, along with other factors (the complainant's strong reputation, the respondent's failure to respond/provide evidence of its intentions, the respondent concealing its identity, and the respondent using false contact details), satisfied panel that bad faith use was demonstrated under UDRP paragraph 4(b) when viewed as a whole and in line with the purposes of the Policy and the (already then) dynamic nature of the Domain Name System and of cybersquatting behaviour (see Pixers Ltd. v. Whois Privacy Corp, WIPO Case No. D2015-1171).

In favour of the Complainant it has to be considered that he holds a well-known trademark. Furthermore, no response to the

complaint has been filed. However, other facts have to be considered in favour of the Respondent. Firstly, as mentioned above, a short search on the web shows that there are a lot of companies which are named "Goehringer". Secondly, the name "Goehringer" is a quite known last name in Germany. Thirdly, the name "Goehringer" is distinctive from the name "Boehringer" in a way that there is only little danger that users might trace a mere parking site titled "Goehringer" to the Complainant. Fourthly, the Respondent has merely registered the domain in question for a domain parking website up to now. There are no links or other references from the website to competitors of the Complainant or any object which might have any relation with the Complainant and its business. The Respondent never asked for excessive fees nor is linked to a pattern of cases of domain name misuses. He is a private person not known to have acted in a domain misuse case before. There is thus in this moment no risk that Internet users may actually believe there to be a real connection between the domain name and the Complainant and/or its goods and services.

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

In the present situation, there are doubts whether the disputed domain name is not substantially similar to the trademark of the Complainant. Apart from that, the domain has not been registered and is not used in bad faith.

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#### FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

**Rejected**

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

1. **GOEHRINGER.XYZ**: Remaining with the Respondent
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### PANELLISTS

Name	<b>Thomas Hoeren</b>
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DATE OF PANEL DECISION **2016-09-27**

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Do not publish the Decision

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