Decision for dispute CAC-UDRP-101451

Case number	CAC-UDRP-101451
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Domain names	boehringer.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM INTERNATIONAL GMBH

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Robert Meier

OTHER LEGAL PROCEEDINGS

The Panel is unaware of other legal proceedings, pending or otherwise, which relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns a large portfolio of trademarks including the wording “BOEHRINGER” in several countries, such as the BOHERINGER® international registration number 799761 since December 2nd 2002.

Furthermore, the Complainant owns multiple domain names consisting in the wording “Boehringer”, such as <boehringer.com> since January, 12th 2000.

FACTUAL BACKGROUND

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

The Complainant is a German family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein.

Ever since, Boehringer has become a global research-driven pharmaceutical enterprise and has today about 140 affiliated companies world-wide with roughly 46,000 employees. The two main business areas of Boehringer are: Human Pharmaceuticals and Animal Health. In 2013 alone, net sales of the Boehringer group of companies amounted to about EUR

14.1 billion.

The Complainant states that the disputed domain name <boehrinqer.com> is confusingly similar to its trademarks BOEHRINGER® and its various domain names. The Complainant argues that:

The disputed domain name <boehrinqer.com> constitutes a misspelled word of the Complainant's registered trademark BOEHRINGER®.

The replacement of the letter "g" by the letter "q" in the word "BOEHRINGER", and the use of the gTLD ".COM" is not sufficient to escape the finding that the domain name <boehrinqer.com> is confusingly similar to the Complainant's trademarks and it does not change the overall impression of the designation as being connected to the trademark BOEHRINGER®.

This is thus a clear case of "typosquatting", i.e. the disputed domain name contains an obvious misspelling of the Complainant's trademark.

Previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusing similar to the complainant's trademark. Please see prior UDRP cases:
- CAC Case n° 101233, ARCELORMITTAL v. Contact Privacy Inc. Customer 124632448 (<arcelormilttal.com>);
- WIPO Case No. D2016-1546 BOEHRINGER Ingelheim Pharma GmbH & Co. KG of Ingelheim v. Martin Hughes (<boehringer-ingalheim.com>);
- WIPO Case No. D2015-0451 Clarins v. "-", Unknown Registrant" / Registration Private, Domains By Proxy, LLC (<calrins.com>);
- WIPO Case No. D2011-1658 Alstom v. Telecom Tech Corp./Private Registration (<asltom.com>).

It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". Thus, the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant further states that the Respondent does not have any rights or legitimate interest in the domain name(s) and provides the following resoning:

The use of privacy or proxy registration services, an inactive website, which is being passively held and not in active use.

According to the WIPO case no. D2003-0455, "Croatia Airlines d.d. v. Modern Empire Internet Ltd.", a Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

In this case, the Complainant states that the Respondent is not affiliated with him nor authorized by him in any way. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark, or apply for registration of the disputed domain name by the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The domain name is inactive. The Complainant contends that it is not legitimate non-commercial or fair use of the disputed domain name. Thus, the Complainant contends that the Respondent cannot be considered to either be making bona fide offering of goods and services or a noncommercial and fair use of the disputed domain name as there is no website associated with the disputed domain name.

The domain name(s) has been registered and is being used in bad faith as it is a registration of a well-known/famous trade mark. There is use of privacy or proxy registration services concerning a misspelling respectively typosquatting. The website is inactive and no use is being made of the domain name. Any use would attract internet users for commercial gain by creating a likelihood of confusion with the Complainant.

The Complainant states that the disputed domain name <boehrinqer.com> is confusingly similar to its trademark BOEHRINGER®. The domain name contains the Complainant's trademark.

By registering the domain name <boehrinqer.com> with the misspelling of the Trademark BOEHRINGER, the Complainant can state that this was intentionally designed to be confusingly similar with the Complainant's trademarks. Previous UDRP Panels have seen such actions as evidence of bad faith. See for instance:
- NAF case no. FA 877979, Microsoft Corp. v. Domain Registration Philippines: finding bad faith registration and use of the <microssoft.com> domain name as it merely misspelled the complainant's MICROSOFT mark.

Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. Additionally, the domain name points to an inactive webpage, making this an example of passive holding. Passive holding is not itself evidence of either good or bad faith, but must be interpreted in the context of all of the circumstances of the case (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 among others).

On these grounds the Complainant concludes that bad faith registration within the meaning of paragraph 4(b) of the Policy is established in the present case for the following reasons:

- the Respondent's choice of the term "boehrinqer" for the disputed domain name, a meaningless term very close to the Complainant's well-known BOEHRINGER trademark, was not merely coincidental but was deliberate and in full knowledge of the Complainant's trademark;

- the disputed domain name points to inactive webpage, that constitutes a lack good faith in respect of domain name;

- this is a clear case of typosquatting which presupposes registration in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed 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 Disputed 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 Disputed domain name has been registered and is being used passively 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.

PRINCIPAL REASONS FOR THE DECISION

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the Disputed domain name should be transferred or cancelled:

(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.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

CONFUSING SIMILARITY WITH EARLIER RIGHTS

The Complainant has stated that the Disputed domain name <boehrinqer.com> is confusingly similar to its registered trademark BOEHRINGER. The Disputed domain name contains the Complainant's trademark almost identically.

By registering the Disputed domain name <boehrinqer.com> with the misspelling of the Trademark BOEHRINGER, the Respondent has intentionally registered a domain name which is confusingly similar with the Complainant’s trademarks. Previous UDRP Panels have seen such actions as evidence of bad faith. See for instance NAF case no. FA 877979, Microsoft Corp. v. Domain Registration Philippines: finding bad faith registration and use of the <microssoft.com> domain name as it merely misspelled the complainant’s MICROSOFT mark.

Given the distinctiveness of the Complainant's trademark and its reputation as a globally active company, it is reasonable to infer that the Respondent has registered the Disputed domain name with full knowledge of the Complainant's trademarks.

The Disputed domain name is confusingly similar to the Complainant’s Trademark, company name and domain. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of

a) disregarding the top-level suffix in the domain name (i.e. “.com”), and

b) not finding that the exchange of one single letter in a complex word would be sufficient to distinguish a domain name from a trademark, in particular if these letters are themselves highly similar, as in this case where the original letter "g" was replaced by the letter "q". The difference is almost too small to be noticed.

Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the Disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

In this case, the Complainant has stated that the Respondent is not affiliated with him nor authorized by him in any way. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark, or apply for registration of the Disputed domain name by the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights

or legitimate interests in respect of the Disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the Disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy)and comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the UDRP Policy.

BAD FAITH

The Disputed domain name is inactive. This is neither legitimate non-commercial nor fair use of the Disputed domain name. The Respondent cannot be considered to either be making bona fide offering of goods and services or a non-commercial and fair use of the Disputed domain name as there is no website associated with the Disputed domain name.

The Disputed domain name has been registered and is being used in bad faith as it is a registration of a well-known/famous trade mark. There is use of privacy or proxy registration services concerning a misspelling respectively typosquatting. The website is inactive and no use is being made of the domain name. Any use would attract internet users for commercial gain by creating a likelihood of confusion with the Complainant.

On these grounds it is concluded that bad faith registration within the meaning of paragraph 4(b) of the Policy is established in the present case for the following reasons:

- the Respondent’s choice of the term “boehringer” for the Disputed domain name, a meaningless term very close to the Complainant’s well-known BOEHRINGER trademark, was not merely coincidental but was deliberate and in full knowledge of the Complainant’s trademark; The Respondent is not commonly known by the Disputed domain name. Neither is the Respondent in any way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the Disputed domain name by the Complainant. This has not been contested by the Respondent.

Therefore, the Panel concludes that the Respondent has registered and is using the Disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINQER.COM**: Transferred

PANELLISTS

Name	**Udo PFLEGHAR**

DATE OF PANEL DECISION 2017-04-07

Publish the Decision