Decision for dispute CAC-UDRP-101519

Case number	CAC-UDRP-101519
Time of filing	2017-04-24 09:12:49
Domain names	boehringer-ingeliheim.com

Case administrator

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

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Abdulrauf Eljbour

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns a large portfolio of trademarks including the wording “BOEHRINGER INGELHEIM” in several countries, such as the BOEHRINGER-INGELHEIM international registration number 221544 since July 2, 1959.

Furthermore, the Complainant owns multiple domain names consisting in the wording “Boehringer Ingelheim”, such as <boehringer-ingelheim.com> since September 1, 1995 and <boehringeringelheim.com> since July 4, 2004.

FACTUAL BACKGROUND

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, the Complainant 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 the Complainant 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 owns several trademarks consisting in the wording BOEHRINGER INGELHEIM in several countries.

The Disputed domain name <boehringer-ingeliheim.com> was registered on April 18, 2017 by the Respondent identified as “Abdulrauf Eljbour”.

The Complainant contends that the Disputed domain name is confusingly similar to its trademarks BOEHRINGER INGELHEIM since the addition of the letter “I” between the letters “L” and “H” in the word INGELHEIM, and the use of the gTLD “.COM” is not sufficient to escape the finding that the disputed domain name 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 INGELHEIM.

The Complainant contends further that the Respondent does not have any rights or legitimate interest in the Disputed domain name 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 Disputed domain name is not linked with an active website, which in the eye of the Complainant demonstrates a lack of legitimate interests in respect of the Disputed domain name because it is not used.

The Complainant furthermore contends that the Disputed domain name has been registered and is being used in bad faith, because the Disputed domain name was intentionally designed by the Respondent to be confusingly similar with the Complainant’s trademarks by adding only the letter "i". Especially considering the distinctiveness of the Complainant's trademark and reputation.

Furthermore, the Complainant contends that the Disputed domain name is not linked with an active website, which other WIPO UDRP panels have held to be evidence of bad faith registration and use, when the incorporation of a famous mark into a domain name is coupled with a website which is not being used. The Respondent has therefore registered and is using the Disputed domain name at issue in order to create a likelihood of confusion and intentionally divert traffic away from the Complainant’s website.

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 UDRP 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 UDRP Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of UDRP 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

A. The Disputed domain name is confusingly similar to the protected mark

The Complainant has rights in the mark BOEHRINGER INGELHEIM by virtue of its registered trademarks.

The Complainant clearly has trademark rights and the Complainant's trademark rights have also been confirmed by previous panels, e.g. CAC Case No. 101420 (<boehringeringelheiminc.com>); CAC Case No. 101436 (<boehringer-ingl1heim.com>) and BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546.

The Panel finds the Disputed domain name is confusingly similar to the Complainant's trademarks.

As stated in BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546: "it is well-established that "[a] domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name" (quoting paragraph 1.10 of the WIPO Overview 2.0).

The Disputed domain name incorporates the Complainant's BOEHRINGER INGELHEIM marks in its entirety. The only difference between the Disputed domain name and the Complainant's BOEHRINGER INGELHEIM trademark is the additional use of the letter "i" ("ingeliheim" instead of "ingelheim"), which is an obvious misspelling of the Complainant's trademark and does not change the overall impression of the trademark.

The gTLD suffix ".com" is to be generally disregarded under the confusing similarity test.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.
If the respondent fails to do so, the second element of the Policy is satisfied, see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110 and CAC Case No. 101284 (<salomontw.com>).

The Complainant states that the Respondent does not have any business relationships with the Complainant.

According to the evidence provided by the Complainant the disputed domain name is not linked with an active website.

The Panel agrees that this could not constitute legitimate, non-commercial or fair use of the Disputed domain name or otherwise create rights or legitimate interests under the circumstances of the case.

Previous UDRP case law supports the view of the Complainant (see e.g. Express Scripts, Inc. v. Windgather Investments Ltd. / Mr. Cartwright, WIPO Case No. D2007-0267 and FA 918556, National Arbitration Forum, Disney Enters., Inc. v. Kamble) and the Panel finds that the Complainant has provided sufficient prima facie evidence of the Respondent's lack of rights or legitimate interests in the Disputed domain name.

The Respondent failed to respond.

The Panel, therefore, finds that the Complainant has shown a prima facie case that has not been rebutted by the Respondent

and, therefore, satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

The Panel finds that the evidence submitted by the Complainant supports a finding of bad faith under paragraph 4(b)(iv) of the Policy, because the registration of the Disputed domain name which contains obvious misspelling of the Complainant's trademark and which is virtually identical to the Complainant's domain name constitutes registration and use bad faith (see, Go Daddy Software, Inc. v. Daniel Hadani, WIPO Case No. D2002-0568 (where the panel found that typosquatting is virtually per se registration and use in bad faith)" – see BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546).

The Panel finds that given the distinctiveness of the Complainant's trademarks and business name, it is reasonable to infer that the Respondent has registered the Disputed domain name with full knowledge of the Complainant's trademarks and with the clear intention of taking advantage of the Complainant's marks and reputation.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGER-INGELIHEIM.COM**: Transferred

PANELLISTS

Name	**Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION 2017-05-23

Publish the Decision