Decision for dispute CAC-UDRP-101589

Case number	CAC-UDRP-101589
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Domain names	boehringer-ingelhelm.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Shia Yang

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name <BOEHRINGER-INGELHELM.COM>.

IDENTIFICATION OF RIGHTS

Boehringer Ingelheim Pharma GmbH & Co.KG (the 'Complainant') is the owner of a number of registered trade marks for BOEHRINGER INGELHEIM or which include BOEHRINGER INGELHEIM, including EUTM number 2493195 in various classes dated 7 December 2001, Canadian trade mark registration number TMA695516 dated 24 August 2006, and international registration number 568844 in various classes and designating various territories ('the BOEHRINGER INGELHEIM mark').

FACTUAL BACKGROUND

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

The Complainant is a German family owned company with its roots dating back to 1885. The Complainant has since become a global research driven pharmaceutical organisation which today has around 140 affiliated companies worldwide, with roughly 46,000 employees, and in 2013 had net sales of around Euros 14.1 billion.

The Complainant is the owner of a number of trade marks including the BOEHRINGER INGELHEIM mark. In addition, it owns many domain names featuring the words BOEHRINGER INGELHEIM including boehringer-ingelheim.com (registered 1

September 1995) and boehringeringelheim.com (registered 4 July 2004), which are used to point to the Complainant's main website.

The disputed domain name was registered by “Shia Yang” (the 'Respondent') on 22 June 2017 who at first used a privacy shield service offered by his registrar. The disputed domain name has since been used to resolve to a web page featuring third party sponsored links.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its BOEHRINGER INGELHEIM mark.

The only difference is the use of the letter 'L' instead of the letter 'I' at the end of the word INGELHEIM. The hyphen and the ".com" aspect of the disputed domain name can be disregarded. This is therefore a clear case of 'typosquatting'. The Complainant refers to the following cases in support of the contention that slight spelling variations do not prevent a finding of confusing similarity.

WIPO Case No. D2016-1546, Boehringer Ingelheim Pharma GmbH & Co. KG v. Martin Hughes
CAC Case no. 101200 Boehringer Ingelheim Pharma GMBH & CO.KG v. Ruthann Halay

Past panels have held that the Complainant's BOEHRINGER INGELHEIM trade mark is well known.
WIPO Case No. D2016-0021, Boehringer Ingelheim Pharma GmbH & Co.KG v. Kate Middleton

The Complainant states the Respondent does not have any rights or legitimate interest in the disputed domain name as:
- No licence or authorisation has been granted to the Respondent to use the Complainant's BOEHRINGER INGELHEIM mark. The Complainant has no business connection with the Respondent.
- The website attached to the disputed domain name points to pay-per-click links to third party websites, and therefore the Respondent intends to exploit and profit from the Complainant's BOEHRINGER INGELHEIM mark.
- The Respondent has registered the disputed domain name in order to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainant's trade marks.
- Further given the distinctiveness and reputation of the Complainant's trade marks, the Respondent must have had the Complainant's mark in mind when registering the disputed domain name.

Finally, according to the Complainant, the disputed domain name has been registered and is being used in bad faith as:
- The registration of the disputed domain name containing a misspelling of the Complainant's mark indicates the Respondent intended to cause confusion. It is reasonable to infer, given the distinctiveness and reputation of the Complainant's mark, that the Respondent had the Complainant's BOEHRINGER INGELHEIM mark in mind when registering the disputed domain name with the clear intention of taking advantage.
-The Respondent’s use of the disputed domain name is to point to a website featuring sponsored third party links. The Respondent has registered the Domain Name to intentionally attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trade mark.
-The Respondent was originally hiding behind his Registrar's privacy shield service to conceal his identity.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed Domain Name is confusingly similar to a trade mark 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 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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The Complainant, being represented by Anne Morin of Nameshield, filed its complaint in relation to the disputed domain name with the CAC on 3 July 2017.

The CAC then formally commenced proceedings on 4 July 2017 and notified the Respondent accordingly.

The Respondent failed to submit a response within the time frame required in this complaint, or at all, and a Notification of Respondent’s Default was therefore issued by the CAC on 2 August 2017.

Having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer, of Palmer Biggs Intellectual Property Solicitors, as the Panel in these UDRP proceedings on 31 July 2017.

PRINCIPAL REASONS FOR THE DECISION

IDENTICAL OR CONFUSINGLY SIMILAR - paragraph 4(a)(i) of the Policy

The disputed domain name 'BOEHRINGER-INGELHELM.COM' consists of the Complainant's BOEHRINGER INGELHEIM mark, save that the last letter 'I' in the second word has been substituted with the letter 'L'. There is also the addition of a hyphen between the two words and the '.com' suffix.

The hyphen in the middle of the BOEHRINGER INGELHEIM mark and addition of the '.com' suffix may both be disregarded when it comes to considering whether a domain name is confusingly similar to a trade mark in which the Complainant has rights.

As a result, given the distinctiveness of the Complainant's BOEHRINGER INGELHEIM mark and the minor change to the spelling of the second word, the Panel concludes that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS - paragraph 4(a)(ii) of the Policy

The Respondent failed to file an administratively compliant (or any) response. In the circumstances the Panel finds from the facts put forward that:

The Respondent does not appear to have any trade marks associated with the BOEHRINGER INGELHEIM mark.

There is no evidence that the Respondent is commonly known by the BOEHRINGER INGELHEIM mark, and the Respondent does not have any consent from the Complainant to use the BOEHRINGER INGELHEIM mark.

There is no evidence to show the Respondent may have used the disputed domain name for any bona fide offering of goods or services of its own. There are third party sponsored links on the Respondent's website attached to the disputed domain name. This is not a bona fide offering of goods and services under 4(c)(i) of the Policy and it is not a legitimate non-

commercial or fair use under 4(c)(iii) of the Policy. See AM Int'l Group Inc. v Benjamin, FA 9442542 (Nat. Arb Forum May 11, 2007) finding that the respondent's use of a domain name to advertise services which competed with the complainant's business did not constitute a bona fide offering of goods and services under paragraph 4(c)(iii) of the Policy.

On the balance of probabilities, and in the absence of any evidence to the contrary (or any administratively compliant response at all) being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii)of the Policy.

REGISTERED AND USED IN BAD FAITH - paragraph 4(a)(iii) of the Policy

Paragraph 4(b) of the Policy sets out non-exclusive criteria which shall be evidence of the registration and use of a domain name in bad faith including circumstances where, by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain (click through income or otherwise), Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its website or location.

On the balance of probabilities, and in the absence of any evidence to the contrary (or any administratively compliant response at all) being put forward by the Respondent, the Panel believes from the facts in this case that the Respondent had the Complainant's BOEHRINGER INGELHEIM mark in mind when registering and subsequently using the disputed domain name. The evidence of the Respondent's website shows that the site contained commercial links. See Pfizer Inc. v Suger 02002-0187 (WIPO Apr 24, 2002) finding the link between the complainant's mark and the content advertised on the respondent's website was obvious, and therefore the respondent must have known about the complainant's mark when it registered the disputed disputed domain name.

The Panel therefore finds that the Respondent has attempted to attract and cause confusion amongst Internet users between the Complainant's BOEHRINGER INGELHEIM mark, and the third party links on the website attached to the disputed domain name. These links are likely to be for commercial gain in that it is likely to be earning click-through income for the Respondent. See AOL LLC v AIM Profiles, FA 964479 (Nat Arb Forum May 20, 2007) finding registration and use of the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy because the respondent was commercially gaining from the likelihood of confusion between the complainant's mark and the products and services advertised on the respondent's website attached to the disputed domain name.

As such, the Panel finds that the disputed domain name is likely to have been registered intentionally to attempt to attract, for commercial gain, Internet users to the web site hosted at the disputed domain name, by creating a likelihood of confusion with the Complainant's BOEHRINGER INGELHEIM mark (paragraph 4(b)(iv) of the Policy), and therefore the disputed domain name was registered and is being used in bad faith within the meaning of 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. **BOEHRINGER-INGELHELM.COM**: Transferred

PANELLISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2017-08-14

Publish the Decision