Decision for dispute CAC-UDRP-101624

Case number	CAC-UDRP-101624
Time of filing	2017-08-01 09:45:29
Domain names	boehrinnger-ingelheim.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Saint Mickel

OTHER LEGAL PROCEEDINGS

The Complainant has stated that no other legal proceedings relating to the disputed domain name are pending or decided. The Panel is also not aware of any such proceedings.

IDENTIFICATION OF RIGHTS

BOEHRINGER INGELHEIM was registered as a trademark under the Madrid system (221544) in 1959, on the basis of previous registrations, and has been renewed since, most recently in 2009. It is currently held across twelve classes, including medicines. The Complainant holds a number of further registrations of this mark, and of associated images, in national trademark systems.

FACTUAL BACKGROUND

The Complainant, Boehringer Ingelheim Pharma GmbH & Co.KG, founded in 1885 and now employing over 45,000 persons across a range of affiliated companies, has its seat in Germany and is active in the fields of pharmaceuticals and animal health. It registered the domain name <BOEHRINGER-INGELHEIM.COM> in 1995.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Czech Arbitration Court has confirmed that written notice of the Complaint sent to the Respondent was returned as

undelivered; an email sent to the addressed in the WHOIS record was neither confirmed as delivered nor resulted in an error message, while an email sent to <postmaster@boehrinnger-ingelheim.com> was returned undelivered as the e-mail address had permanent fatal errors. The Respondent never accessed the online platform.

The Complainant states that the disputed domain name <BOEHRINNGER-INGELHEIM.COM> is confusingly similar to its trademarks and associated domain names, being a misspelled word (BOEHRINNGER rather than BOEHRINGER). It cites past decisions of this Provider and of others regarding slight spelling variations. The Complainant adds that the Respondent is not affiliated with him nor authorized by it in any way.

The Complainant argues that the use of a 'parking' webpage displaying sponsored links means that the Respondent has no rights or legitimate interests in the disputed domain name. On bad faith, the Complainant argues that such is present, owing to the reputation of the Complainant, the use of the misspelling, and the aforementioned utilisation of the disputed domain name for a list of sponsored links.

Reference is also made to a similar decision of the WIPO AMC,
D2016-1546 <BOEHRINGER-INGALHEIM.COM> (a misspelling of the second word rather than the first word), and to a range of other decisions under the UDRP.

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).

The panel is satisfied that the Complainant has rights in the text 'BOEHRINGER INGELHEIM'. The only difference between the trademark in which the Complainant has rights, on one hand (disregarding the TLD), and the disputed domain name, on the other hand, is the words BOEHRINGER (in the trademark) and BOEHRINNGER (in the disputed domain name). While not identical, this is manifestly of confusing similarity, not least because BOEHRINGER is, as noted below, a personal name of the founder of the company which is now the Complainant, and BOEHRINNGER, with an additional N, carries no distinctive meaning known to the Panel.

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).

The Complainant states that the Respondent is not affiliated with him nor authorized by it in any way.

As the company name and trademarks are clearly derived from the name of the Complainant's founder (Boehringer) and its geographic location (the German city of Ingelheim), the Panel ought to consider whether any legitimate interests might be present in relation to one or more of these strings. However, the Respondent has not participated in the proceedings, and there is no evidence available to suggest that such would even be in the slightest way plausible.

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).

The screenshot provided by the Complainant, taken on 24 July 2017, notes that the domain name has 'just been registered' and includes generic sponsored links (that is, there are links to e.g. 'Chinese food' and banner ads for web hosting). At the time of the CAC's attempt to contact the Respondent (2 August 2017) and the Panel decision (3 September 2017), the website at the disputed domain name did not contain any content.

As in the recent decision in CAC 101495 <BOLLORE-US.NET>, there is no evidence of the non-exhaustive examples of bad faith in registration and use found in paragraph 4(b) of the UDRP, so the task for the Panel is to look at all available facts and

circumstances.

It is more difficult for a Panel to find bad faith where a Complaint is made immediately after registration, especially where nothing is known about the circumstances of the Respondent (e.g. a pattern of conduct) and there is no evidence of specific fraudulent or deceptive activity (e.g. emails using a domain name purporting to come from the Complainant). However, it is clear in UDRP decisions that 'passive holding' can constitute use in bad faith, especially where a Panel cannot realistically identify a situation where use would be in good faith (see WIPO Jurisprudential Overview, para 3.2 including its summary of the 'Telstra' line of cases (D2000-0003 <TELSTRA.ORG>); see further, for example, CAC 101602 <BANCAINTESA-ONLINE.INFO>). In the present case, it would be very difficult for a Respondent to demonstrate a good-faith use of a misspelling of such a distinctive mark; if the intention were, for instance, to provide a critical analysis of the Complainant, a good faith attempt to do so could use an aspect of the mark rather than a misspelling, and ensure that users were not confused through explanatory text on the website. Here, the Panel notes that the website at the disputed domain name contained advertising for a short period, and now provides no content. Moreover, the mark in question is distinctive, and has been in use for over a century; the Respondent has provided contact details in the United States of America, where the Complainant, which has a global reputation, is active and has for a long time been active. (Compare, in this regard, the decision in CAC 101570 <KALMARPARTS.NET>, a passive holding case where use in bad faith was not made out to the satisfaction of the Panel, in particular due to the failure of the Complainant in that case to create a presumption that the Respondent must have been aware of the Complainant's rights when it registered the disputed domain names, in light of the nature of the business in question).

The Respondent has taken no positive steps, to the knowledge of the Panel, to displace the possible likelihood of confusion. Moreover, the deliberate registration of a name combining a version of the name in which rights are held creates a clear presumption of knowledge and intention. The apparent position whereby no valid postal address has been supplied does not assist the Respondent either, as it raises the possibility that steps were taken to obscure the Respondent's identity, especially in light of the very recent registration.

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

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name <BOEHRINNGER-INGELHEIM.COM>. On the other hand, it is clear that the Complainant has rights in respect of the trademark BOEHRINGER INGELHEIM. In light of the evidence presented regarding the use of the disputed domain name by the Respondent, and the legal findings as set out above, the Panel can find that the disputed domain name is being operated in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the UDRP have therefore been met.

Although there are some slight differences between the decision cited in the Complaint, D2016-1546 <BOEHRINGER-INGALHEIM.COM>, and the present case (e.g. the cited decision was a situation where there was no active use of the domain name at all, whereas here there may have been use for a brief period), it is a very useful affirmation, regarding the same complainant, of the weakness of the case for a non-participating Respondent where the text differs by one character and no other meaning or function can be identified.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINNGER-INGELHEIM.COM**: Transferred

PANELLISTS

Name	**Dr Daithi Mac Sithigh**

DATE OF PANEL DECISION 2017-09-03

Publish the Decision