Decision for dispute CAC-UDRP-101730

Case number	CAC-UDRP-101730
Time of filing	2017-10-13 09:59:04
Domain names	BOEHRINGER-INGEHEIM.COM

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Cimpress Schweiz GmbH

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant relies on its company name and has demonstrated to be owner of the international trademark "BOEHRINGER-INGELHEIM" no. 221544, registered on July 2, 1959 in the classes (Nice classification) 1, 2, 3, 5, 29 and 30 valid in several countries worldwide, amongst which the country where the Respondent is located according to the Whois data (Switzerland).

FACTUAL BACKGROUND

The Complainant asserts and provides evidentiary documentation of the following facts, which are 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 worldwide 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 Complainant group of companies amounted to about EUR 14.1 billion.

The disputed domain name <boehringer-ingeheim.com> was registered on September 25, 2017 by the Respondent identified as the company “Cimpress Schweiz GmbH”.
Such company was already Respondent in the domain name disputes before the CAC, concerning typosquatting cases:
- CAC case no. 101623, Boehringer Ingelheim Pharma GmbH & Co.KG v. Cimpress Schweiz GmbH (“baehringer-ingelheim.com”);
- CAC case no. 101588 Boehringer Ingelheim Pharma GmbH & Co.KG v. Cimpress Schweiz GmbH (“boehrnger-ingelheim.com”).

The disputed domain name displays a parking page with the information “sorry, we couldn’t find that page”.

The Complainant has sent a cease and desist letter to the Respondent to which it has not replied.

PARTIES CONTENTIONS

The Complainant contends that the disputed domain name is confusingly similar to its well-known trademark, because it constitutes an obvious misspelling of the Complainant's trademark. It also states that the deletion of the letter “L" in the word "INGELHEIM", and the use of a hyphen and the gTLD “.COM” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant’s trademark and it does not change the overall impression of the designation as being connected to such trademark.

The Complainant affirms that the Respondent:
- is not affiliated with nor authorized by the Complainant in any way;
- has not been granted with any license or authorization to use the Complainant's trademark or to register the disputed domain name;
- has no business with the Complainant and this latter does not carry out any activity for the Respondent.

Thus, the Complainant contends that the Respondent has no rights or legitimate interest on the disputed domain name, and has registered and used the domain name only in order to create a likelihood of confusion with the Complainant’s trademarks.

According to the Complainant the Respondent has registered and used the disputed domain name in bad faith, because:
- the disputed domain name is confusingly similar to the well-known trademark of the Complainant, because it is constituted of a misspelled version of the Complainant's trademark; hence, the Complainant retains that this is a clear case of typosquatting;
- the disputed domain name points to a parking page;
- the Respondent has not answered to the cease and desist letter;
- by creating a likelihood of confusion the Respondent attempted to take advantage of the reputation of the Complainant.

The Complainant, therefore, requests the transfer of the disputed domain names.

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 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 UDRP Policy the Complainant is required to prove each of the following three elements to obtain the transfer of the disputed domain name:
(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
(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.

I. RIGHTS AND IDENTITY OR CONFUSING SIMILARITY

The Complainant has established that it has rights in the company name "BOEHRINGER INGELHEIM" and the trademark "BOEHRINGER-INGELHEIM" since 1959. The Complainant's trademark was registered prior to the registration of the disputed domain names (September 25, 2017) and is widely well-known just as the activity of the Complainant.

The Panel finds that the domain name <boehringer-ingeheim.com> is confusingly similar to the Complainant's trademark and company name, since it is consensus view of UDRP Panels that adding, deleting or substituting letters or numbers of the Complainant’s registered mark does not preclude a finding of confusing similarity. Therefore, slight differences, as the deletion of the letter "L" of the word "INGELHEIM" of the Complainant’s trademark and company name and the addition of a hyphen between the words the Complainant's company name are insufficient to negate the confusingly similarity between the disputed domain name and the Complainant's marks.

UDRP Panels also agree that the top-level domain (TLD), in this case <.com>, is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the trademark of the complainant as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

The similarity of the disputed domain name to the Complainant's marks, is likely to lead to confusion and/or association for the Internet users.

Accordingly, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the UDRP Policy.

II. LACK OF RIGHTS OR LEGITIMATE INTERESTS

It is a consensus view of UDRP Panels that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see paragraph 2.1 of the WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.")

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or any other mark or domain name identical or confusingly similar to such mark.

As per the WHOIS records, confirmed by the Registrar, the Respondent is "Cimpress Schweiz GmbH" and there is no

evidence that the Respondent has been commonly known by the domain name <boehringer-ingeheim.com> or has acquired any rights in a trademark or trade name corresponding to the disputed domain name. The Respondent was involved in other typosquatting cases before the CAC in which the Panels decided the transfer of the domain names to the Complainant (CAC 101623 <baehringer-ingelheim.com>; CAC 101588 <boehrnger-ingelheim.com>).

The elements that the disputed domain name resolves to parking page displaying "sorry, we couldn't find that page" and the Respondent has not replied to the cease and desist letter of the Complainant makes it likely that the Respondent lacks rights and/or legitimate interests in respect of the domain name.

The Panel finds that the Complainant has established its prima facie case and the Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name. Thus, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the UDRP Policy.

III. BAD FAITH REGISTRATION AND USE

Given the distinctiveness and reputation of the Complainant's trademark and activity, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights in such marks.

Considering:
- that the Respondent has registered the disputed domain name confusingly similar to the well-known trademark and company name of the Complainant, by deleting the letter "L" of the word "INGELHEIM" of the Complainant's trademark and company name and adding a hyphen between the words of the Complainant's company name and by creating a likelihood of confusion with the Complainant's marks the Respondent intentionally attempted to attract, for commercial gain, Internet users to its website;
- that the Respondent was involved in other typosquatting cases against the Complainant before the CAC and, hence, it is involved in a pattern of conduct;
- that the disputed domain name resolves to a parking page displaying "sorry, we couldn't find that page";
- the failure of the Respondent to reply to the cease and desist letter sent by the Complainant or to submit a response or to provide any evidence of actual or contemplated good faith use,
this Panel finds that the Complainant has discharged the burden of proof under paragraph 4(a)(iii) of the UDRP Policy and the domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2017-11-28

Publish the Decision