Decision for dispute CAC-UDRP-101761

Case number	CAC-UDRP-101761
Time of filing	2017-11-09 10:31:43
Domain names	boehringer.cloud

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Organization	Private Registry Authority

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other related proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is, inter alia, the proprietor of the trademark BOEHRINGER in several countries, such as the international registration 799761 registered on December 2, 2002.

FACTUAL BACKGROUND

The following facts were presented by the Complainant and were not disputed 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 owns a large portfolio of trademarks including the wording “BOEHRINGER” in several countries, such as

the international registration 799761 registered on December 2, 2002.

The disputed domain name was registered on October 19, 2017 by the Respondent.

On October 25, 2017, a cease and desist letter has been sent to the Respondent at “domains@privateregistryauthority.com”. The Respondent did not answer to this cease and desist letter.

The Complainant contends that the disputed domain name is identical to its previous trademarks.

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 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

A. Identical or Confusingly Similar

The Complainant has stated that it has valid trademark rights for the sign BOEHRINGER.

The disputed domain name is confusingly similar to this trademark of the Complainant, considered as famous due to the long company history, the significant size of the company and the global character of its operations, since it is acknowledged that the top level domain has usually not an influence on the likelihood of confusion between the sign being incorporated at the second level domain and the trademark in question. This is also valid for the generic top level domain „.cloud“.

The Panel therefore considers the disputed domain name to be confusingly similar to the trademark BOEHRINGER in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the term “boehringer” or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services. The Respondent has not come forward to rebut the Complainant’s assertion in this regard.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

In the view of the Panel, the Respondent must have been aware of the famous trademarks of the Complainant when registering the disputed domain name. The Complainant has also not authorized the Respondent to make use of its trademarks. From the record, the Panel does not see any conceivable legitimate use being made by the Respondent of the disputed domain name.

The circumstances of this case, in particular the Respondent's confusingly similar use of a famous trademark indicate that the Respondent registered and used the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location. The fact that the website under the disputed domain name is without any active attempt to sell or to contact the trade mark holder (passive holding), does not as such prevent a finding of bad faith, as it it acknowldged by WIPO Panels. See "Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc., Case No. D2017-0246 with further case law references.

According to above cited decision and other decisions, the Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known trade mark, no response to the Complaint having been filed, and the Registrant's concealment of its identity. All these elements, cited as examples, are present here.

The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with 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.CLOUD**: Transferred

PANELLISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2017-12-22

Publish the Decision