Decision for dispute CAC-UDRP-101887

Case number	CAC-UDRP-101887
Time of filing	2018-02-15 10:02:20
Domain names	boehringer-lngeiheim.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Xing Zhang

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings between the parties to this dispute or relating 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 BOHERINGER INGELHEIM® international registration number 221544 since July 2, 1959.

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, 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.

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.

The disputed domain name was registered on February 7, 2018 by the Respondent. The Complainant contends that the disputed domain name is confusingly similar to its trademarks BOHERINGER INGELHEIM®.

The disputed domain name is not used.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant states that the disputed domain name is confusingly similar to its trademarks BOEHRINGER INGELHEIM® and its domain names associated. The disputed domain name constitutes a misspelled word of the Complainant’s registered trademark BOEHRINGER INGELHEIM®.

The Complainant contends that the inversion of the letter “L" and the letter “I” 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®.

This is thus a clear case of "typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademarks.

Finally, it is well-established that “a domain name that wholly incorporates a Complainant’s registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”.

Thus, the disputed domain name is confusingly similar to the Complainant’s trademark.

A Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

In this case, the Complainant states that the Respondent 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 used and points to a parking website. The Complainant contends that it is not legitimate non-commercial or fair use of the disputed domain name.

Non-use of a disputed domain name does not demonstrate rights or legitimate interests within the meaning of paragraph 4 (a) of the Policy.

The Complainant states that the disputed domain name <boehringer-lngeiheim.com> is confusingly similar to its trademark BOEHRINGER INGELHEIM ®. Indeed, the disputed domain name contains the Complainant’s trademarks.

Given the distinctiveness of the Complainant’s trademark and reputation, it is reasonable to infer that the Respondent has

registered the disputed domain name with full knowledge of the Complainant's trademarks.

Further, by registering the domain name <boehringer-lngeiheim.com> with the misspelling of the Trademark BOEHRINGER INGELHEIM, the Complainant can state that this misspelling was intentionally designed to be confusingly similar with the Complainant's trademarks.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

RESPONDENT: 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

On February 12, 2018, the Registrar transmitted by e-mail to the Czech Arbitration Court (CAC) its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. CAC sent an e-mail communication to the Complainant on February 19, 2018, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on the same day.

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 accordance with paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name the Complainant must prove the following:

(i) The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
(ii) The Respondent has no rights or legitimate interests in respect of the Domain Name; and
(iii) The Domain Name has been registered and is being used in bad faith.

In light of the Respondent's default, the Panel may treat as uncontested the Complainant's factual assertions. The Panel will now review each of these elements.

A. Identical or Confusingly Similar

The Complainant, in relation to the trademark rights, has established through the evidence on record its trademark

“BOHERINGER INGELHEIM”, since 1959. Additionally, the Complainant provided evidence showing the mark has achieved recognition through its use.

Turning now to analyzing the confusingly similarity of the disputed domain name and the Complainant’s trademarks, the Panel notes that the disputed domain name incorporates the entirety of the trademark, namely “BOHERINGER INGELHEIM”, with the addition of a hyphen between the words, which is inconsequential to this analysis, and a typographical error, consisting of the letter “L” instead of the first letter “i” in “INGELHEIM”. These differences are not sufficient to negate the confusing similarity between the disputed domain names and the Complainant’s trademark and the Panel thus finds the disputed domain name falls within the prototypical example of typosquatting as per section 1.9 of WIPO 3.0 Overview.

The Panel therefore holds that the Complaint fulfils the first condition set under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The Complainant states that contents that the Respondent is not affiliated with the Complainant nor authorized by the Complainant in any way. The Complainant also contends that neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark. Additionally, the Complainant asserts that it does not carry out any activity for, nor has any business links with the Respondent. In the view of the Panel, these assertions are sufficient to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name (see 2.1 of WIPO 3.0 Overview).

Given that there is no available evidence on record that would otherwise allow the Panel to find any rights or legitimate interests for the Respondent in the disputed domain name and the fact that the Respondent failed to provide any evidence to refute the Complainant’s prima facie showing under the second element, the Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, and that the Respondent in failing to reply to the Complainant’s contentions has not rebutted such prima facie case.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

The Panel finds, as per the evidence on record, that the Respondent was more than likely aware of the Complainant and targeted the Complainant’s trademarks when registering the disputed domain name. The Respondent registered the disputed domain name incorporating the entirety of the trademark, with a slight change attributed to the commonly known practice of typosquatting, for commercial gain – benefiting from the likelihood of confusion. This leaves the Panel with no other option than to conclude that the registration and use of the disputed domain name has been in bad faith, as it embodies the breadth of the conducts contained in the indicative list under paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the Complainant has satisfied the last element required under paragraph 4(a)(iii) of the Policy.

D. Decision

For the aforestated reasons and in accordance with the provisions contained under Paragraph 4 (a) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2018-03-16

Publish the Decision