Decision for dispute CAC-UDRP-101971

Case number	CAC-UDRP-101971
Time of filing	2018-04-25 09:15:51
Domain names	boehrlnger-lngelheim.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	BRIANNE HOAG

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Registered trademarks, both word (Boehringer Ingelheim) and figurative.

FACTUAL BACKGROUND

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

Previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusing similar to the complainant's trademark. Please see prior UDRP cases:

- CAC Case n° 101449, Boehringer Ingelheim International GMBH v. Tia Seki (<boehringer-inqelheim.com>);

- WIPO Case No. D2016-1546 BOEHRINGER Ingelheim Pharma GmbH & Co. KG of Ingelheim v. Martin Hughes (<boehringer-ingalheim.com>);

- CAC Case no. 101436 Boehringer Ingelheim Pharma GMBH & CO.KG v. "Jackie Uding", (<boehringer-ingl1heim.com>);

- CAC Case no. 101200 Boehringer Ingelheim Pharma GMBH & CO.KG v. Ruthann Halay (<boehringer-ingelhein.com>).

Past Panels have held that the Complainant's trademark BOEHRINGER INGELHEIM® is distinctive and well known. Please see for instance WIPO Case No. D2016-0021 Boehringer Ingelheim Pharma GmbH & Co.KG v. Kate Middleton (<boehringeringelheimltd.com>).

The Respondent is known as "BRIANNE HOAG" and has not acquired trademarks mark rights on the terms "BOEHRLNGER LNGELHEIM"". Indeed, past Panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name.

Please see for instance:

- FORUM case No. FA 96356, Broadcom Corp. v. Intellifone Corp.: Panel stated that the Respondent has "no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use".

Furthermore, the disputed domain name points to an inactive website since its registration. Therefore, the Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Please see for instance:

- WIPO case No. D2000-1164, Boeing Co. v. Bressi: the Panel stated that the "Respondent has advanced no basis on which he could conclude that it has a right or legitimate interest in the domain names";

- FORUM case No. FA109697, LFP, Inc. v. B & J Props.: the Panel stated that "the respondent cannot simply do nothing and effectively "sit on his rights" for an extended period of time when the respondent might be capable of doing otherwise".

Therefore, by registering the domain name <boehrlnger-lngelheim.com> with the misspelling of the Trademark BOEHRINGER INGELHEIM, the Complainant can state that this practical was intentionally designed to be confusingly similar with the Complainant's trademarks. Previous UDRP Panels have seen such actions as evidence of bad faith.

Please see for instance:

WIPO Case No. D2016-1546, Boehringer Ingelheim Pharma GmbH & Co. KG v. Martin Hughes (<boehringer-ingalheim.com>): the registration of the Domain Name which contains obvious misspelling of the Complainant's BOEHRINGER INGELHEIM trademark and which is virtually identical to the Complainant's <boehringer-ingelheim.com> domain name constitutes registration and use bad faith.

Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. Please see for instance previous UDRP typosquatting cases involving the Complainant:

- CAC Case no. 101449, Boehringer Ingelheim International GMBH v. Tia Seki (<boehringer-inqelheim.com>): given the distinctiveness of the Complainant's trademarks and business name, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks and with the clear intention of taking advantage of the Complainant's marks and reputation.

- WIPO Case no. D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA: "Panel finds it is highly unlikely that Respondent had no knowledge of Complainant's company name and legal rights to the trademark BOEHRINGER INGELHEIM […], considering its notorious status and success in the pharmaceutical field."

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. Please see for instance WIPO case no. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows.

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

The disputed domain name constitutes a misspelled word of the Complainant’s registered trademark on two occasions: the letter "i" was replaced by the letter "l" ("L" in small letter); in small letters the disputed domain name is “boehrlnger lngelheim” where the trademark is “boehringer ingelheim”. The difference is hardly visible.

Without being contradicted, the Complainant contends that the Respondent is not affiliated with - nor authorized by - him in any way, and is not commonly known under the disputed Domain Name.

The disputed Domain Name points to an inactive website since its registration. Without being contradicted, the Complainant contends that Respondent did not make any use of disputed domain name since its registration, and has no demonstrable plan to use the disputed domain name.

The difference between the Complainant's trademarks and the disputed Domain Name is so thin, and the Complainant is so well-known (a pharmaceutical group of companies with roots going back to 1885, with 140 affiliated companies world-wide today and roughly 46,000 employees) that the Panel can hardly believe the the Respondent was not aware of the existence of the Complainant. The registration was intentionally designed to be confusingly similar with the Complainant’s trademarks and divert traffic.

A Complainant is required to make out a prima facie case. Once such prima facie case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name, and the absence of bad faith. The Respondent did not answer to the Complaint and did not provide the Panel with any factual and/or legal element that would contradict the Complaint, or lower the strength of the arguments raised by the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRLNGER-LNGELHEIM.COM**: Transferred

PANELLISTS

Name	**Mr. Etienne Wéry**

DATE OF PANEL DECISION 2018-05-27

Publish the Decision