Decision for dispute CAC-UDRP-102274

Case number	CAC-UDRP-102274
Time of filing	2018-12-20 13:51:31
Domain names	boehrlnger-lngelhelm.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	Karen Liles

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings the Panel is aware of which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is - among others - the owner of the international trademark registrations no. 221544 (registered since 1959) and no. 568844 (registered since 1991) for BOEHRINGER-INGELHEIM.

The Complainant also owns several domain names incorporating the wording BOEHRINGER-INGELHEIM, such as <boehringer-ingelheim.com> (since 1995) and <boehringeringelheim.com> (since 2004).

FACTUAL BACKGROUND

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

The Complainant is a well-known German family-owned pharmaceutical group of companies established in 1885, which has currently about 140 affiliated companies world-wide, 50,000 employees and net sales amounting to approximately EUR 18.1 billion (in 2017). The Complainant is the owner of several trademark registrations consisting of the wording BOEHRINGER-INGELHEIM.

Likewise, the Complainant is the owner of a portfolio of domain names including the wording BOEHRINGER-INGELHEIM since 1995.

The Respondent has registered the domain name <boehrlnger-lngelhelm.com> only last December 14, 2018. according to the Complainant, the disputed domain name would be a misspelled word of the Complainant's registered trademark BOEHRINGER INGELHEIM.

The Complainant affirms that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way with the Complainant's business. In particular, the Complainant states that the Respondent is not affiliated with BOEHRINGER INGELHEIM, nor authorized by such company in any way. In addition, The Complainant affirms it currently does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use, or apply for registration of the disputed domain name by the Complainant.

The Complainant contends that the disputed domain name has been registered and being used in bad faith. In particular, given the distinctiveness of the Complainant's trademark and its reputation, the only conclusion would be that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark.

The disputed domain name is currently inactive and the Respondent did not provide any explanation concerning the registration (and the passive use) of the disputed domain name.

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 IS IDENTICAL OR CONFUSINGLY SIMILAR TO THE COMPLAINANT`S TRADEMARK

The Panel finds that the disputed domain name is confusingly similar to the trademark BOEHRINGER-INGELHEIM and to the relative domain names registered by the Complainant, which has proven to have prior rights since 1959.

In particular, the Panel agrees that the the substitution of the letter "I" by the letter "L" three times in the trademark BOEHRINGER INGELHEIM, and the use of the gTLD ".COM" is not sufficient to escape the finding that the domain name <boehrlnger-lngelhelm.com> is confusingly similar to the Complainant's trademarks and it does not change the overall impression of the designation as being connected to the trademarks BOEHRINGER INGELHEIM.

Many WIPO and CAC decisions – even involving the present Complainant, such as the ones mentioned in the Complaint – stated how the typosquatting practice (the slight spelling variation of a trademark) does not prevent a disputed domain name from being confusingly similar to the Complainant's trademark (see CAC Case No. 101971, Boehringer Ingelheim Pharma GmbH & Co.KG v. BRIANNE HOAG <boehrlnger-lngelheim.com> and CAC Case No. 101887, BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG v. Xing Zhang <boehringer-lngeiheim.com>). There is no doubt that the same case lies before us in this matter.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

According to the information provided by the Complainant, the Respondent is not affiliated nor authorized by the Complainant in any way. Likewise, the Complainant neither licensed nor authorized the Respondent to make any use of its trademark BOEHRINGER-INGELHEIM, or to apply for registration of the disputed domain name on behalf of the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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

Given all the above and taken into account the fact that the Respondent did not provide any response within the present proceeding, the Panel accepts the contentions of the Complainant that the Respondent has no such rights or legitimate interests in <boehrlnger-lngelhelm.com>.

THE DISPUTED DOMAIN NAME HAS BEEN REGISTERED AND IS BEING USED IN BAD FAITH

The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name. This prima facie evidence was not challenged by the Respondent.

The disputed domain name represents a clear example of typosquatting, an activity which is considered evidence of bad faith by the consistent case law in domain name disputes (see, among others, FORUM case no. FA 157321 Computerized Sec. Sys., Inc. v. Hu).

In the absence of a response from Karen Liles and given the reputation of the Complainant and its trademark (see, among others, WIPO Case No. D2016-0021, Boehringer Ingelheim Pharma GmbH & Co.KG v. Kate Middleton), the Panel infers that the Respondent had the Complainant's trademarks BOEHRINGER-INGELHEIM in mind when registering the disputed domain name.

Consequently, the Panel believes that the same was registered and is being (passively) used in bad faith, in order to prevent the Complainant from reflecting the mark in the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	Tommaso La Scala

DATE OF PANEL DECISION 2019-01-24

Publish the Decision