Decision for dispute CAC-UDRP-102491

Case number	**CAC-UDRP-102491**
Time of filing	**2019-05-15 10:02:21**
Domain names	**boehringer-jngelheim.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Boehringer Ingelheim Pharma GmbH & Co.KG**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Organization	**Charlotte Grubbs**

OTHER LEGAL PROCEEDINGS

The panel is not informed of other legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant, Boehringer Ingelheim Pharma GmbH & Co.KG, owns a large portfolio of trademarks including the wording “BOEHRINGER INGELHEIM” in several countries, such as the international trademark BOEHRINGER-INGELHEIM n°221544, registered since 2 July 1959.

In addition, the Complainant owns multiple domain names consisting in the wording "BOEHRINGER-INGELHEIM", such as "boehringer-ingelheim.com" registered since 1 September 1995.

These facts are not contested by the Respondent.

FACTUAL BACKGROUND

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 roughly 50,000 employees. The three main business areas of BOEHRINGER INGELHEIM are human pharmaceuticals, animal health and

biopharmaceuticals. In 2018, BOEHRINGER INGELHEIM achieved net sales of around 17.5 billion euros.

The Complainant owns a large portfolio of trademarks including the wording “BOEHRINGER INGELHEIM” in several countries, such as the international trademark BOEHRINGER-INGELHEIM® n°221544, registered since July 2nd, 1959 and duly renewed.

Furthermore, the Complainant owns multiple domain names consisting in the wording “BOEHRINGER INGELHEIM”, such as <boehringer-ingelheim.com> registered since 1 September 1995.

Recently, the Complainant noticed that the disputed domain name <boehringer-jngelheim.com> had been registered on 9 May 2019.

The disputed domain name currently points to a page without content except for the following message: “Forbidden You don't have permission to access / on this server.”

PARTIES CONTENTIONS

No administratively compliant Response has been filed by the Respondent.

RIGHTS

To determine whether the trademark "BOEHRINGER INGELHEIM" is confusingly similar in the sense of paragraph 4(a)(I) of the Policy, a comparison has to be made and the likelihood of the Internet user confusion has to be determined. It should be taken into account that BOEHRINGER INGELHEIM is a distinctive and well-known trademark.

In this context, it is generally found that when a trademark constitutes the dominant or principal component of the disputed domain name, the substitution of just one letter is generally insufficient to avoid confusing similarity in the sense of paragraph 4(a)(I) of the Policy.

This is a clear case of "typosquatting“, i.e. the disputed domain name contains a misspelling of the Complainant’s trademark. Previous panels have found that the slight spelling variations do not prevent a disputed domain name from being confusingly similar to the complainant’s trademark.(CAC Case No. 102274, BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG v. Karen Liles <boehrlnger-lngelhelm.com>; CAC Case No. 102191, Boehringer Ingelheim Pharma GmbH & Co.KG v. kapin kerry <boehringer-ingelhim.com>).

In the present case, the Respondent has only changed the letter "I" by the letter "J" to the well-known trademark BOEHRINGER INGELHEIM, which creates confusion because the public hardly notice the difference.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name to be confusingly similar to the 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

To determine whether the Respondent has rights or legitimate interests in the domain name, the 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 burden of proof shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name (Accor v. Eren Atesmen, WIPO D2009-0701; Malayan Banking Berhad v. Beauty, Success & Truth International, WIPO D2008-1393).

Paragraph 4(c) of the Policy provides that the following circumstances can demonstrate rights or legitimate interests in the domain name for the purpose of paragraph 4(a)(ii):
(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent is not identified in the WHOIS database as the holder of the disputed domain name.

In addition, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that he is not related in any way with the Complainant. The Respondent does not carry out any activity for, nor has any business with the Complainant.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOEHRINGER-INGELHEIM, or apply for registration of the disputed domain name by the Respondent.

Furthermore, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark BOEHRINGER-INGELHEIM. Typosquatting can be evidence that a respondent lacks rights and legitimate interests in the domain name. (In FORUM Case No. 1765498, Spotify AB v. The LINE The Line / The Line, the Panel has found that Respondent's registration of the domain name is typosquatting and indicates a lack of rights and legitimate interests in the domain name).

Finally, the disputed domain name points to a page without content except for the message: "Forbidden You don't have permission to access / on this server." The Complainant contends that Respondent did not make any use of the disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to effectively use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

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

1. THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

The Respondent has never been authorized by the Complainant to use the "BOEHRINGER-INGELHEIM" trademarks nor to register the disputed domain name. The Respondent seems to have registered the disputed domain name in the sole purpose of attracting more people to its website or to engage in fishing expeditions.

2. THE DOMAIN NAME IS BEING USED IN BAD FAITH

According to the Complainant, given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

Therefore, the registration of the domain name <boehringer-jngelheim.com> with the misspelling of the trademark BOEHRINGER INGELHEIM, was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith.

Furthermore, the disputed domain name points to a page without content except for the message: "Forbidden You don't have permission to access / on this server." Thereby, the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off or an infringement of the Complainant's intellectual property rights.

Finally the Respondent has never responded to this complaint. With regard to this, it has been mentioned in earlier cases

that the failure of a Respondent to respond to an attempt at contact, can be relevant in a finding of bad faith, e.g., WIPO Case No. D2000-1623, News Group Newspapers Limited and News Network Limited v. Momm Amed Ia; WIPO Case No. D2000-1598 Nike, Inc. v. Azumano Travel.

The Complainant has, to the satisfaction of the Panel, shown that 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

For the abovementioned reasons, it appears to the Panel that the Respondent has registered and used a domain name that is confusingly similar to the Complainant's trademarks and associated domain name, in which the Respondent has no rights or legitimate interest and which is registered and 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-JNGELHEIM.COM**: Transferred

PANELLISTS

Name	**Tom Joris Heremans**

DATE OF PANEL DECISION 2019-06-27

Publish the Decision