Decision for dispute CAC-UDRP-102840

Case number	**CAC-UDRP-102840**
Time of filing	**2020-01-06 10:57:52**
Domain names	**boehringerinvestgr.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

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

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Organization	**ctdoty**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is owner of the International trademark BOEHRINGER no. 799761, registered on 2 December 2002, in classes 1, 3, 5, 10, 16, 30, 31, 35, 41, 42, 44, duly renewed.

The Complainant is also owner of the domain name <boehringer.com> registered on 12 January 2000.

FACTUAL BACKGROUND

The Complainant is a global leading pharmaceutical company, founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein (Germany). The core businesses of the Complainant are human pharmaceuticals, animal health and biopharmaceuticals. The Complainant has 50,000 employees worldwide and its net sales in 2018 amounted to about Euros 17.5 billion.

The disputed domain name was registered with privacy registration service on 22 December 2019. Upon receipt of the Complaint, the registrar disclosed the underlying registration data, identifying as registrant Charles Doty - ctdoty in the United States.

At the moment of the submission of the Complaint the disputed domain name resolved to a parking page of the registrar. At the moment of the drafting of this Decision, the disputed domain name resolves to a website displaying the script “account suspended”.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant states that the disputed domain name is confusingly similar to its trademark.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant 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 of the Complainant’s trademark, or apply for registration of the disputed domain name by the Complainant.

Besides, the website related to the disputed domain name points to the registrar’s parking page. The Complainant contends that Respondent did not make any use of disputed domain name since its registration and this confirms that Respondent has no demonstrable plan to use the disputed domain name.

The Complainant also contends that the registration of disputed domain name confusingly similar to the well-known trademark of the Complainant and, thus, the constructive knowledge on behalf of the Respondent of the Complainant’s potential rights, as well as the non-use of the disputed domain name, resolving to parking page, clearly shows the Respondent’s bad faith in the registration and use of the disputed domain name.

The Complainant, therefore, requests the transfer of the disputed domain name.

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 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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:
(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used by the Respondent in bad faith.

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in the BOEHRINGER trademark since 2002.

In assessing identity or confusing similarity the Panel finds that the disputed domain name incorporates the entirety of the Complainant's trademark and differs from such mark by merely adding the generic and descriptive term "invest" and the letters "g" and "r", as well as the TLD ".com". The addition of such generic and descriptive term and letters to the Complainant's mark neither affects the attractive power of such trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark.

In UDRP cases where the relevant trademark is recognizable within the disputed domain name, Panels agree that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) and letters does not prevent a finding of confusing similarity under the first element (see 1.8 WIPO Overview 3.0).

UDRP Panels also agree that the top-level domain is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark as it is a technical requirement of registration (see 1.11.1 WIPO Overview 3.0).

Hence, this Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP Panels that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see 2.1 WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.")

The disputed domain name was registered with privacy registration service. The Respondent was identified by the registrar with the name Charles Doty - ctdoty, located in the United States.

The Complainant has no relationship with the Respondent whatsoever.

The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register the disputed domain name.

There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name first resolved to a parking page of the registrar and then to a website displaying the script “account suspended”. Such use of the domain name is clearly not a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s mark.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The Complainant, well-known for its businesses, has sufficiently demonstrated to be owner of the BOEHRINGER trademark, registered prior to the registration of the disputed domain name.

The Respondent registered the disputed domain name confusingly similar to Complainant's mark, since it wholly incorporates the BOEHRINGER trademark. The addition of the generic and descriptive term “invest”, the letters “g” and “r” and the TLD “.com” (technical requirement of the registration) is not sufficient to escape the finding of confusing similarity between the disputed domain name and the Complainant’s mark.

Given the good-will and reputation of the Complainant acquired over the years, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant and its mark and the intention to exploit such reputation by diverting traffic away from the Complainant’s website.

Furthermore, the Respondent used a privacy service when registering the disputed domain name. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact a panel’s assessment of bad faith (see 3.6 WIPO Overview 3.0).

The disputed domain name in not active. First it resolved to a parking page of the registrar and then to a website displaying the script “account suspended”.

With reference to the non-use of domain names, UDRP panels consider the following factors when applying the passive holding doctrine:
- the degree of distinctiveness and/or reputation of the Complainant’s trademark;
- the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good faith use;
- the Respondent’s concealing its identity (privacy or proxy service) or use of false contact details;
- the implausibility of any good faith use to which the disputed domain name may be put.

Taken into account all circumstances of this case, the Panel finds that it is implausible that there is any legitimate purpose in the registration and use of the disputed domain names by the Respondent.

Considered all circumstances of the dispute, the Panel finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

Therefore, the disputed domain name is to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINVESTGR.COM**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2020-02-20

Publish the Decision