Decision for dispute CAC-UDRP-102862

Case number	CAC-UDRP-102862
Time of filing	2020-01-20 10:00:51
Domain names	boehringeringelheimetrebates.com, boehringeringelheimpetrebate.com, boehringeringelheimprebates.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Fundacion Comercio Electronico

OTHER LEGAL PROCEEDINGS

The Panel is not cognizant of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns international trademark for “BOEHRINGER-INGELHEIM” under n°221544, registered since July 2, 1959.

FACTUAL BACKGROUND

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

The Complainant is a 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 business areas of Boehringer are human pharmaceuticals, animal health and biopharmaceuticals. In 2018, net sales of the Boehringer group amounted to about EUR 17.5 billion.

The Complainant owns a large portfolio of trademarks including the wording “BOEHRINGER INGELHEIM” in several countries.

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

The disputed domain names have been registered on January 10th, 2020 and redirect to a parking page with commercial links both related and unrelated to the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT

A. The Complainant states that the disputed domain names are confusingly similar to its trademark BOEHRINGER-INGELHEIM. Indeed, the trademark BOEHRINGER-INGELHEIM is reproduced in its entirety, except for the dash.

The addition of misspelling generic terms “PET REBATES” (“ET Rebates”, “Pet Rebate” and “P Rebates”) are not sufficient to escape the finding that the domain names are confusingly similar to the trademark BOEHRINGER-INGELHEIM. It does not change the overall impression of the designation as being connected to the Complainant’s trademark BOEHRINGER-INGELHEIM. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain names associated.

On the contrary, the addition of the terms “PET REBATES” worsens the likelihood of confusion, as it directly refers to the Complainant’s website https://www.boehringeringelheimpetrebates.com/.

Moreover, the Complainant contends that the addition of the generic Top-Level Domain suffix “.COM” does not change the overall impression of the designation as being connected to the trademark BOEHRINGER-INGELHEIM. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

Thus, the disputed domain names are confusingly similar to the Complainant’s trademark.

B. 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 UDRP.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain names. 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.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. 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 BOEHRINGER-INGELHEIM, or apply for registration of the disputed domain names by the Complainant.

Furthermore, the disputed domain names redirect to a parking page with commercial links

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain names.

C. The Complainant states that the disputed domain names are confusingly similar to its trademark BOEHRINGER-

INGELHEIM.

The Complainant is one of the world's 20 leading pharmaceutical companies, with roughly 50,000 employees worldwide and 17,5 million euros in net sales.

The Complainant's trademark BOEHRINGER-INGELHEIM is a distinctive and well-known trademark. Past Panels have confirmed the notoriety of the trademark BOEHRINGER-INGELHEIM.

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

Furthermore, the disputed domain names redirect to a parking page with commercial links. The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademark for its own commercial gain, which is an evidence of bad faith.

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

RESPONDENT

No administratively compliant Response has been filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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

An initial notification of commencement was sent to the Respondent on January 20, 2020. There were some doubts regarding the notification having reached the Respondent and therefore, a subsequent notification was duly sent to the Respondent on February 17, 2020.

The Panel is satisfied that all procedural requirements under UDRP have been met and there is no other reason why it would be unsuitable to provide the Decision.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Regarding the first step under this element, and as per evidence on record, the Complainant owns international trademark for "BOEHRINGER-INGELHEIM" under n°221544, registered since July 2, 1959. Based on this, the Panel is satisfied that the Complainant has shown its trademark rights in "BOEHRINGER-INGELHEIM".
Turning now to the second step under this element, namely, assessing the confusing similarity between the disputed domain names and the trademark, the Panel notes that the disputed domain names reproduces the trademark "BOEHRINGER-

INGELHEIM” in its entirety, with the exception of the hyphen between the two words.

In addition to the above-mentioned, the disputed domain names include the following words and/or string of characters “etrebates”, “petrebate” and “prebates”. All of these reference the term “rebate”, which is a term commonly associated with the activity of the Complainant. The additional words in each of the terms refer to “pet”, “et” and “p”.

The additional words and/or string of characters are not enough to dispel a finding of confusing similarity between the disputed domain names and the trademark. If anything, the addition of the term “rebate” enhances the perception of confusing similarity.

Based on this, the Panel finds the disputed domain names to be confusingly similar to the Complainant’s trademark. As a result, the Panel determines that the Complaint has satisfied the first element set under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence on record, the uncontested facts indicate that a) the Respondent is not commonly known as the disputed domain names; b) the Respondent is not affiliated with the Complainant and is not authorized to carry out any activity for the Complainant and c) the Respondent has not acquired trademark rights on this term.

Further to this, and as asserted by the Complainant, it appears that the Respondent has been parked the disputed domain names with references and links to competitors of the Complainant.

This fact pattern leads the Panel to conclude that the Respondent does not have rights or legitimate interests in the disputed domain names.

In conclusion, the uncontested facts on record and on the balance of probability, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain names and consequently the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The trademark is clearly referenced by the Respondent in the disputed domain names. Furthermore, the use of terms commonly associated with the activity of the Complainant are evidence that the Respondent was clearly aware of the Complainant and intended to benefit financially from the likelihood of confusion. This is evidenced through the parking of the disputed domain names promoting competitors of the Complainant, which indicate a lack of a bona fide offering of goods or services or legitimate non-commercial or fair use.

In light of the circumstances of the case, based on the available records and on balance of probabilities, the Panel finds that the Complainant has proven that the disputed domain names were registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

D. Decision

For the foregoing reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain names to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINGELHEIMETREBATES.COM**: Transferred
2. **BOEHRINGERINGELHEIMPETREBATE.COM**: Transferred
3. **BOEHRINGERINGELHEIMPREBATES.COM**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2020-03-16

Publish the Decision