Decision for dispute CAC-UDRP-102891

Case number	CAC-UDRP-102891
Time of filing	2020-02-04 09:16:23
Domain names	boehrinsger-ingelheim.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	Susan Farwell

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-INGELHEIM No. 221544, registered on 2 July 1959 in classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30, 32, and US trademarks BOEHRINGER-INGELHEIM No. 0641166, registered on 5 February 1957 in class 5, and BOEHRINGER INGELHEIM No. 2096336, registered on 16 September 1997 in class 5. All such marks have been duly renewed.

The Complainant is also owner of the domain name <boehringer-ingelheim.com> registered since 1 September 1995.

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 29 January 2019. Upon receipt of the

Complaint, the registrar disclosed the underlying registration data, identifying as registrant Susan Farwell, an individual residing in the US.

The disputed domain name resolves to a parking page with commercial links.

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

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name constitutes a misspelled version of the Complainant's trademark. Neither the addition of the letter "S" in the Complainant's trademark nor the use of the TLD ".COM" are sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's mark or change the overall impression of the designation as being connected to such mark.

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

The Complainant finally contends that the registration of disputed domain name with an intentional misspelling of the Complainant's well-known trademark and, thus, the constructive knowledge on behalf of the Respondent of the Complainant's potential rights, as well as the use of the disputed domain name resolving to a parking page with commercial links, clearly shows the Respondent's bad faith both in the registration and in the 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 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

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 MARKS

The Complainant has established that it has rights in the prior BOEHRINGER-INGELHEIM trademark since 1957 and BOEHRINGER INGELHEIM trademark since 1997. Although under the Policy it is not a required that the Complainant holds trademark within the territory where the Respondent is located, the Panel notes that such trademarks are valid in the US.

In assessing identity or confusing similarity the Panel finds that the disputed domain name incorporates the entirety of the Complainant's trademarks and differs from such marks by merely adding the letter "S" within the component "BOEHRINGER" and the TLD ".COM". In case of the trademark BOEHRINGER INGELHEIM also the hyphen was added. The addition of such letter to the Complainant's marks and the hyphen in case of the BOEHRINGER INGELHEIM trademark neither affects the attractive power of such trademarks, nor is sufficient to distinguish the disputed domain name from the Complainant's marks.

A domain name which contains sufficiently recognizable aspects of the relevant mark and uses a common, obvious, or intentional misspelling of such trademark is considered by UDRP Panels confusingly similar to the relevant mark for purposes of the first element (see 1.9 WIPO Overview 3.0). Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersion of other terms or numbers. The practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors is commonly called typosquatting.

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 marks.

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 Susan Farwell, 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

trademarks 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, which is a typosquatted version of the Complainant's marks, resolves to a parking page of the registrar with links related to the Complainant and its trademarks. 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 marks.

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-INGELHEIM and BOEHRINGER INGELHEIM trademarks, registered prior to the registration of the disputed domain name and valid in the territory of Respondent (the US).

The Respondent registered the disputed domain name confusingly similar to Complainant's marks, since it contains sufficiently recognizable aspects of the such marks and uses a common, obvious, or intentional typo of such trademarks (the addition of the letter "S" in the term "BOEHRINGER" and the hyphen in case of the BOEHRINGER INGELHEIM trademark).

Given the good-will and reputation of the Complainant and its marks 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 marks 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).

Finally, the disputed domain name resolves to a parking page of the registrar with links related to the Complainant and its trademarks. The Panel finds that this evidences that the Respondent, by using the disputed domain name, have intentionally attempted to attract, for commercial gain, Internet users to her web site or other on-line location, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of her web site or location or of a product or service on her web site or location (paragraph 4(b)(iv) of the Policy).

Considered all circumstances of the dispute, the Panel finds that this is a clear case of typosquatting. The Complainant regrettably has been targeted numerous times by such form of cybersquatting over the years (inter alia, CAC Cases No. 101588, 101623, 101730, 102786, 102274, 102191).

The Complainant has, therefore, 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).

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. **BOEHRINSGER-INGELHEIM.COM**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2020-02-28

Publish the Decision