Decision for dispute CAC-UDRP-102939

Case number	CAC-UDRP-102939
Time of filing	2020-02-25 10:02:00
Domain names	boehringeringekheimpetrebates.com, boehringeringelehimpetrebates.com, boehringeringelheimperrebates.com, boehringeringelheimpetreates.com, boehringeringelheimpetrebaes.com, boehringeringhelheimpetrebates.com, boehringerringelheimpetrebate.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Zhichao Yang

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any pending or decided legal proceedings which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

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 2 July 1959 and duly renewed until the present time.

The Complainant owns multiple domain names consisting in the wording “BOEHRINGER INGELHEIM”, such as <boehringer-ingelheim.com> since 1 September 1995 and <boehringeringelheim.com> registered since 4 July 2004.

The disputed domain names <boehringeringekheimpetrebates.com>, <boehringeringelehimpetrebates.com>, <boehringeringelheimperrebates.com>, <boehringeringelheimpetreates.com>, <boehringeringelheimpetrebaes.com>, <boehringeringhelheimpetrebates.com> and <boehringerringelheimpetrebate.com> have been registered on 18 February 2020 and redirect to a parking page with commercial links both related and unrelated to the Complainant.

FACTUAL BACKGROUND

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.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

(2) respondent has no rights or legitimate interests in respect of the domain name; and

(3) the domain name has been registered and is being used in bad faith.

The Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules because of the Respondent's failure to submit a response. Therefore, in the absence of a

response, it is appropriate to accept as true all allegations of the Complaint.

The Complainant contends that it has rights in the BOEHRINGER-INGELHEIM (e.g. International Reg. No. 221544 registered on 2 July 1959 and duly renewed) through its registration of the mark with the WIPO. Registration of a mark with the WIPO sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the mark 'BOEHRINGER-INGELHEIM.' The Complainant's trademark BOEHRINGER-INGELHEIM no. 221544 is a distinctive and well-known trademark.

The notoriety and the actually distinctive nature of the trademark BOEHRINGER-INGELHEIM no. 221544 is confirmed by its widespread and longstanding use and reputation in the field of the Complainant´s business areas i.e. human pharmaceuticals, animal health and biopharmaceuticals since many decades.

Rights

The Complainant states that the disputed domain names are confusingly similar to its trademark BOEHRINGER-INGELHEIM no. 221544. Indeed, the disputed domain names include the trademark BOEHRINGER-INGELHEIM as each includes the mark in its entirety, merely misspelling it by changing or removing a single or some letter or to add a word and adding the ".com" gTLD.

The disputed domain names are confusingly similar to the Complainant's trademark BOEHRINGER-INGELHEIM on the grounds that the addition of the letters "K" and "H" and "R" or the omission of the letters "L" and "E" in the second part "INGELHEIM" of the trade mark is not sufficient to escape the finding that the disputed domain name <boehirnger-ingelheim.com> is confusingly similar to the Complainant's trademark and it does not change the overall impression of the designation as being connected to the trademark BOEHRINGER-INGELHEIM because the disputed domain names constitute misspelled words of the Complainant's registered trademark BOEHRINGER-INGELHEIM. The substitution, deletion or addition of letters or even a word in the disputed domain names consisting of misspellings of trademark is not sufficient to avoid the likelihood of confusion with the Complainant and not diminish the confusingly similar nature between the marks and the disputed domain names. Thus that is a clear case of "typosquatting" when the disputed domain names contain an obvious misspelling of the Complainant's trademark. The mere addition of the terms "PETREBATES" or "PERREBATES" or "PETREATES" or "PETREBAES" or "PETREBATE" like misspelling variants to the trademark BOEHRINGER-INGELHEIM worsens the likelihood of confusion, as it directly refers to the Complainant's website www.boehringeringelheimpetrebates.com (see for instance CAC case no. 102922 Boehringer Ingelheim Pharma GmbH & Co.KG v. Super Privacy Service LTD c/o Dynadot ("Since the words "pet rebates" are associated in the public mind with the Complainant, none of the differences in any of the disputed domain names is sufficient to dispel a finding of confusing similarity between the disputed domain names and the trademark").

Thus, the Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, a 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 Policy.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain names. The Panel finds that the Respondent is not commonly known by the disputed domain names because the WHOIS information was not similar to the disputed domain names. Only the name of the Respondent "Zhichao Yang" shows the absence of a prima facie link between its name and the trade mark of the Complainant.

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

The Panel finds that a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees (see for instance Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend).

Thus, 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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

Bad faith

The Complainant states that the disputed domain names are confusingly similar to its trademark and that the Respondent choose to register the domain names to create a confusion with domain name <boehringeringelheimpetrebates.com>, used by the Complainant to offer rebates on pet health products. Consequently, given the distinctiveness of the Complainant's trademark and its reputation, the Panel comes to the conclusion that the Respondent has registered and used the disputed domain names with full knowledge of the Complainant's trademark. Given that the disputed domain names redirect to a parking page with commercial links it is obvious that 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 and is also an evidence of bad faith (see for instance WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves, So, the disputed domain name was registered and is being used in bad faith.").

The particular circumstances of this case that the Panel has considered are that the Complainant is a German family-owned pharmaceutical group of companies with roots going back to 1885, the Complainant has become a global research-driven pharmaceutical enterprise and has today about roughly 50,000 employees and in 2018, the Complainant achieved net sales of around 17.5 billion Euros. As such, the Complainant's mark 'BOEHRINGER-INGELHEIM' is considered as being a well-known and reputable trademark and the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name (see for instance CAC Case No. 102854 Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico ("The Panel finds that the Respondent registered the disputed domain names with the Complainant's well-known trademark in mind and has used them with intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the websites to which the disputed domain names resolve. Hence the Panel finds that the disputed domain names were registered and are being used in bad faith").

Thus, the Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINGEKHEIMPETREBATES.COM**: Transferred
2. **BOEHRINGERINGELEHIMPETREBATES.COM**: Transferred
3. **BOEHRINGERINGELHEIMPERREBATES.COM**: Transferred
4. **BOEHRINGERINGELHEIMPETREATES.COM**: Transferred
5. **BOEHRINGERINGELHEIMPETREBAES.COM**: Transferred
6. **BOEHRINGERINGHELHEIMPETREBATES.COM**: Transferred
7. **BOEHRINGERRINGELHEIMPETREBATE.COM**: Transferred

PANELLISTS

Name	**JUDr. Vojtěch Trapl**

DATE OF PANEL DECISION 2020-03-26

Publish the Decision