Decision for dispute CAC-UDRP-102938

Case number	CAC-UDRP-102938
Time of filing	2020-02-25 11:00:11
Domain names	boehringeringelheimpetrebares.com, boehringeringerheimpetrebates.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Zhichao Yang

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademark registrations across various jurisdictions, inter alia international trademark registration no. 221544 BOEHRINGER-INGELHEIM, registered since July 2, 1959. The trademark is registered for various goods in classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30, and 32 (hereinafter referred to as the "Trademark").

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. In 2018, it had net sales of about EUR 17.5 billion.

The Complainant is also the owner of several domain names consisting of the Trademark, such as <boehringer-ingelheim.com> (created in 1995) and <boehringeringelheim.com> (created in 2004) and <boehringeringelheimpetrebates.com> (created in 2019), the latter of which is used to provide information on Boehringer Ingelheim Animal Health USA Inc. Rebate Center.

The disputed domain names were both registered on February 18, 2020, and redirect to a parking page with pay-per-click links some related to the Complainant and its activities.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT

The Complainant contends that the disputed domain names include the Trademark in its entirety, merely misspelling it by changing or removing a single letter, and are confusingly similar to the trademark.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain names. In this regard, the Complainant states that the Respondent has no relationship with the Complainant's business and is not authorized or licensed to use its trademarks. In addition, the Complainant contends that the Respondent is not commonly known by the disputed domain names and that the Respondent's use of the disputed domain names to forward Internet users to a parking page with commercial links to third parties' websites is no bona fide offering of goods or services or legitimate noncommercial or fair use under the Policy.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith. In this regard, the Complainant contends that the Trademark is widely known and highly distinctive and that the Respondent was fully aware of the Complainant when registering the disputed domain name. The Complainant also states that the Respondent has provided no evidence of any actual or contemplated good faith use by it of the disputed domain names and is using the disputed domain names to attract, for commercial gain Internet users to its websites or other on-line locations by creating a likelihood of confusion with the Trademark as to the source, sponsorship, affiliation or endorsement of Respondent’s websites or location or of a product or service on Respondent’s websites or location.

RESPONDENT

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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

(i) the disputed domain names are identical or confusingly similar to the Complainant's trademark; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and

(iii) the disputed domain names have been registered and are being used in bad faith.

1. The Panel accepts that the disputed domain names are confusingly similar to the Trademark as they fully incorporate the Trademark. It is well established that the specific top-level domain name generally is not an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between the complainant's trademark and the disputed domain name. The additional words “pet rebares” and "pet rebates" are merely descriptive and do not eliminate the similarity between the Complainant’s trademark and the disputed domain names but, on the contrary, enhance the likelihood of confusion, as they directly refer to the Complainant’s website at www.boehringeringelheimpetrebates.com.

2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain names. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain names.

Based on the evidence before the Panel, the Panel cannot find any rights or legitimate interests of the Respondent either. In particular, the Respondent’s use of the disputed domain names to forward Internet users to pay-per-click parking pages does not constitute a bona fide offering of goods and services under paragraph 4(c)(i) of the Policy.

3.1 The Panel is satisfied that the Respondent registered the disputed domain names with full knowledge of the Complainant and its rights in Trademark as the Trademark is well-established. In addition, the disputed domain names are obvious typos of the Complainant's domain name <boehringeringelheimpetrebates.com> which supports a finding of bad faith registration.

3.2 As to bad faith use, by using the disputed domain names in connection with landing pages providing pay-per-click links which promote third parties’ products and services, the Respondent was, in all likelihood, trying to divert traffic intended for the Complainant’s website to its own for commercial gain as set out under paragraph 4(b)(iv) of the Policy. It is well established that a respondent (as the registered owner of the domain name) is in general ultimately responsible for the information available at the website and for all content posted there, regardless of how and by whom such content was generated and regardless of who profits directly from the commercial use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINGELHEIMPETREBARES.COM**: Transferred
2. **BOEHRINGERINGERHEIMPETREBATES.COM**: Transferred

PANELLISTS

Name	**Peter Müller**

DATE OF PANEL DECISION 2020-03-29

Publish the Decision