Decision for dispute CAC-UDRP-102950

Case number	CAC-UDRP-102950
Time of filing	2020-03-05 09:50:08
Domain names	boehringerelheimpetrebates.com, boehringeringingelheimpetrebates.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Fundacion Comercio Electronico

OTHER LEGAL PROCEEDINGS

The Complainant has declared that there are no other legal proceedings, pending or decided, which relate to the disputed domain names. The Panel is not aware of any such proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of various marks, including a trade mark 'BOEHRINGER INGELHEIM' registered under the Madrid international system in respect of various territories (568844, first registered 22 March 1991, and with its next expiry in 2021) in classes including 5 (pharmaceutical products for humans and animals) and 31 (animal food).

FACTUAL BACKGROUND

The Complainant, a company with its seat in Ingelheim, Germany, was founded in the 19th century and now carries out activities, in multiple territories and at a significant scale (e.g. employing c. 50,000 people), in the pharmaceutical and animal health industries. It is the Registrant of various domain names of its own, used for websites, such as <BOEHRINGER-INGELHEIM.COM> first registered in 1995, and <BOEHRINGERINGELHEIMPETREBATES.COM> first registered on 13 August 2019.

The Respondent, an individual providing contact details at a legal person (foundation), with its seat in Panama City, Panama, registered the disputed domain name on 28 February 2020. (The Panel notes that the Complaint refers to the organisation, though the Registrar Verification refers to both individual and organisation).

PARTIES CONTENTIONS

No administratively compliant Response has been filed. Neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court; an e-mail sent to the address provided by the Respondent was successfully relayed. The Respondent never accessed the online platform.

The Complainant contends that the disputed domain name was registered and is being used in bad faith, relying in particular upon the presence of commercial links on a website operated by the Respondent, as well as the confusing similarities between the disputed domain name and its mark, and the lack of any justification provided by the Respondent. The Complainant emphasises the distinctiveness of its mark, a pattern of conduct on the part of the Respondent, and its own specific activities at its own website <BOEHRINGERINGELHEIMPETREBATES.COM>. It requests that the disputed domain name be transferred to it.

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).

The disputed domain names differ from the mark in which the Complainant has rights in a number of respects (disregarding, in accordance with UDRP practice, the generic TLD .com).

First, there are differences between the Complainant's relevant mark and the disputed domain names. In respect of the disputed domain name <boehringerelheimpetrebates.com>, the difference is between 'INGELHEIM' (in the mark) and 'ELHEIM' in the domain name. This represents the omission of 'ING'. In response of the disputed domain name <boehringeringingelheimpetrebates.com>, the difference is between 'INGELHEIM' (in the mark' and 'INGINGELHEIM' in the domain name. This represents, conversely, the addition of 'ING'. In both situations, the result is that the disputed domain names are each confusingly similar to the mark, especially as the overall impression on the user may be of close similarity at first glance.

Second, the Panel notes that the string 'PETREBATES' is included in both of the disputed domain names, but not in any of the Complainant's marks. The Panel is therefore required to consider whether the disputed domain name is confusingly similar to a mark in which the Complainant has rights. The most likely interpretation of this string - which has no dictionary meaning of its own - is as the English-language term 'pet rebates'. As the Complainant is active in manufacturing and distributing animal health products, and indeed operates a website at the domain name <BOEHRINGERINGELHEIMPETREBATES.COM>, prior to the registration of each of the disputed domain names, through which it offers rebates (retrospective discounts) to customers who have bought animal (pet) health products, it is not difficult to find that the additional text is descriptive of activities associated with the Complainant including those carried out under its trade marks.

The Panel is strengthened in this conclusion by its review of the thirteen recent decisions (one of which was by this same Panelist) of variously constituted Panels (some pertaining to multiple domain names) at this Provider, all within the last six weeks, which have concerned the Complainant and a successful argument concerning the use of 'rebates' or 'pet rebates': see cases 102854, 102872, 102871, 102875, 102862, 102924, 102937, 102931, 102929, 102922, 102940, 102939, 102938 (listed in chronological order of publication); seven of these decisions also involved the present Respondent. The Complainant has rightly highlighted a number of these decisions in its Complaint.

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).

The Complainant contends that the Respondent is not affiliated with nor authorised by the Complainant in any way, and that the Complainant does not carry out any activity for, nor has any business with the Respondent. Moreover, the Complainant declares that it has neither licensed nor authorised the Respondent to make use of its mark.

The Respondent is known as 'Carolina Rodrigues' of the organisation 'Fundacion Comercio Electronico' but has not participated in these proceedings, and so also provides no evidence of affiliation, rights, or legitimate interests. The Complainant's company name and trade marks are manifestly derived from the name of the Complainant's founder (Boehringer) and its geographic location (the German city of Ingelheim). As such, the Panel cannot find any reason why the non-participating Respondent would choose to carry out its activities under this name, nor indeed under the various names that have been, as listed above, the subject of successful Complaints across multiple Panels in the months of February and March 2020.

The disputed domain names, at the time that the Complaint was filed, led Web users to a 'parking' page with what appear to be commercial links to various providers of goods or services. This too does not sustain any argument that the Respondent is engaged in (e.g.) the bona fide offering of goods or services in a way that would constitute rights or legitimate interests for the purposes 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).

The Panel notes that other Panels have noted the well-known nature of the trade mark 'BOEHRINGER-INGELHEIM', to the extent that a Respondent can reasonably be assumed to have had it in mind when registering a disputed domain name containing the same or similar text (e.g. CAC Case No. 102275 Boeringer Ingelheim Pharma GmbH v Karen Liles). The present Panel found the same in an earlier decision concerning the same parties: CAC Case No. 102871 Boehringer Ingelheim Pharma GmbH v Fundacion Comercio Electronico.

The Panel further notes that, at the time of the commencement of these proceedings, the disputed domain names each pointed to a 'parking' page with what appear to be (similar) commercial links to various other providers of goods or services (including, it appears, the Complainant). The Panel can safely conclude that, at least for a period of time, the Respondent 'intentionally attempted to attract, for commercial gain, Internet users to its website', by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site (paragraph 4(b)(iv) of the Policy).

Finally, the Panel notes the Complainant's submission that the Respondent has been the Respondent in various other disputes to which the UDRP applied. These disputes include the seven decisions made by Panels in a six-week period up to the date of this decision, which all concern the Fundacion Comercio Electronico (and the same Complainant) - Cases 102854, 102872, 102871, 102875, 102862, 102929, 102940 (listed in chronological order of publication). The same Respondent has also appeared in other cases (with other Complainants), such as CAC Case No. 102696, Amundi Asset Management vs Fundacion Comercio Electronico. In each case, the Complainant has prevailed. The Respondent has manifestly engaged in a pattern of conduct of registering domain names containing the marks of others including the Complainant's mark. As such, this Panel also finds that the activities of the Respondent meet the requirements set out in paragraph 4(b)(ii) of the Policy (registering a domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the Respondent has] engaged in a pattern of such conduct).

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.

It is noted that the same Panelist recently made a decision (in favour of the Complainant) in respect of proceedings between the same parties, regarding a different domain name also using the term 'pet rebates': CAC Case 102871 Boehringer Ingelheim Pharma GmbH v Fundacion Comercio Electronico, <BOEHRINGERINGLHEIMPETREBATES.COM>. As some of the factual issues (e.g. the Complainant's marks), and the arguments advanced by the Complainant, are the same in the earlier decision and this one, there will be, necessarily, some close similarities between the decisions. However, all due

consideration has been given to the specific facts and legal arguments in respect of these present proceedings.

PRINCIPAL REASONS FOR THE DECISION

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain names <BOEHRINGERELHEIMPETREBATES.COM> and <BOEHRINGERINGINGELHEIMPETREBATES.COM>. On the other hand, it is clear that the Complainant has rights in respect of the trademark BOEHRINGER INGELHEIM (to which the disputed domain names are confusingly similar), and has carried out various online activities including a website dedicated to the provision of 'pet rebates'. In light of the evidence presented regarding the use of the disputed domain name by the Respondent (including the provision of commercial links), the Panel can find that the disputed domain name is being operated in bad faith. The Panel also noted the concentration of cases concerning this Complainant and Respondent, all further having in common the use of the term 'pet rebates' or a close variant thereof. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERELHEIMPETREBATES.COM**: Transferred
2. **BOEHRINGERINGINGELHEIMPETREBATES.COM**: Transferred

PANELLISTS

Name	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2020-03-31

Publish the Decision