Decision for dispute CAC-UDRP-102997

Case number	CAC-UDRP-102997
Time of filing	2020-04-03 10:40:58
Domain names	boehringers-ingelheim.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Anthony Romeo

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other legal proceedings.

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 July 2nd, 1959 and duly renewed.

Furthermore, the Complainant owns multiple domain names consisting in the wording “BOEHRINGER INGELHEIM”, such as <boehringer-ingelheim.com> registered since 1995-09-01.

FACTUAL BACKGROUND

The Complainant is a German 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 INGELHEIM has become a global research-driven pharmaceutical enterprise and has today about roughly 50,000 employees. The three main business areas of BOEHRINGER INGELHEIM are: human pharmaceuticals, animal health and biopharmaceuticals. In 2018, BOEHRINGER INGELHEIM achieved net sales of around 17.5 billion euros.

The disputed domain name <boehringers-ingelheim.com> was registered on March 30th, 2020. The disputed domain name is inactive.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The disputed domain name <boehringers-ingelheim.com> is confusingly similar to its trademark BOEHRINGER-INGELHEIM® and its domain names associated.

Indeed, the addition of the letter “S” in the trademark BOEHRINGER-INGELHEIM® and the use of the gTLD “.COM” are not sufficient to escape the finding that the domain name <boehringers-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®.

The disputed domain name <boehringers-ingelheim.com> constitutes a misspelled word of the Complainant’s registered trademark BOEHRINGER-INGELHEIM®.

This is thus a clear case of "typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark. Previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusingly similar to the complainant’s trademark.

- CAC Case No. 102891, Boehringer Ingelheim Pharma GmbH & Co.KG v. Susan Farwell <boehrinsger-ingelheim.com>;
- CAC Case No. 102864, Boehringer Ingelheim Pharma GmbH & Co.KG v. Jowat <boehringeringelheims.com> (“The Complainant has clearly proved that it is a long standing and successful leading pharmaceutical company. It is clear that its trademarks and domain names containing the term “BOEHRINGER INGELHEIM” are well-known. The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name. The disputed domain name is therefore deemed identical or confusingly similar.”).

NO RIGHTS OR LEGITIMATE INTERESTS

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, 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 contends that the Respondent is not known as the disputed domain name. 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. E.g., Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).”)

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <boehringers-ingelheim.com> and he is not related in any way with the Complainant. 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 name by the Complainant.

Furthermore, the disputed domain name is a typosquatted version of the trademark BOEHRINGER-INGELHEIM®. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users’ typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name. Please see:

- Forum Case No. 1765498, Spotify AB v. The LINE The Line / The Line (“The Panel finds that Respondent’s registration of the domain name is typosquatting and indicates it lacks rights and legitimate interests in the domain name per Policy paragraph 4(a)(ii).”);
- Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group (“The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy paragraph 4(a)(ii).”).

The Respondent has not replied to the Complaint, and the panel sees no conceivable legitimate interest in anyone owning this domain name, other than Complainant. Thus, Respondent has no legitimate interest.

BAD FAITH

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. Given the distinctiveness of the Complainant's trademark and its reputation, and the nearly identical typosquatted domain name registered by Respondent, it is reasonable to infer that the Respondent has registered and used the domain name in bad faith, with full knowledge of the Complainant's trademark.

Please see for instance:
- WIPO Case No. D2019-0208, Boehringer Ingelheim Pharma GmbH & Co. KG v. Marius Graur (“Because of the very distinctive nature of the Complainant’s trademark [BOEHRINGER-INGELHEIM] and its widespread and longstanding use and reputation in the relevant field, it is inconceivable that the Respondent registered the disputed domain name without being aware of the Complainant’s legal rights.”);
- CAC Case No. 102274, BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG v. Karen Liles (“In the absence of a response from Karen Liles and given the reputation of the Complainant and its trademark (see, among others, WIPO Case No. D2016-0021, Boehringer Ingelheim Pharma GmbH & Co.KG v. Kate Middleton), the Panel infers that the Respondent had the Complainant's trademarks BOEHRINGER-INGELHEIM in mind when registering the disputed domain name.”).

Therefore, by registering the domain name <boehringers-ingelheim.com> with the misspelling of the trademark BOEHRINGER INGELHEIM, the Respondent intentionally aimed to be confusingly similar with the Complainant’s trademark. Previous UDRP Panels have seen such actions as evidence of bad faith.

Please see for instance WIPO Case No. D2016-1546, Boehringer Ingelheim Pharma GmbH & Co. KG v. Martin Hughes <boehringer-ingalheim.com> (“the registration of the Domain Name which contains obvious misspelling of the Complainant’s BOEHRINGER-INGELHEIM trademark and which is virtually identical to the Complainant’s <boehringer-ingelheim.com> domain name constitutes registration and use bad faith.”)

Furthermore, the disputed domain name is inactive, and MX servers are configured. The Complainant contends, and the panel agrees, that it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law.

Consequently, the Respondent has registered the disputed domain name in bad faith and has used it to create a likelihood of confusion with the Complainant’s trademark as to source, affiliation or endorsement, in the meaning of paragraph 4(b)(iv) of the Policy, and thus acted in bad faith. On these bases, the Respondent has registered and is using the disputed domain name in bad faith.

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

The domain name is virtually identical to Complainant's lengthy, hyphenated and highly distinctive trademark. It is not

possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERS-INGELHEIM.COM**: Transferred

PANELLISTS

Name	**Mike Rodenbaugh**

DATE OF PANEL DECISION 2020-05-07

Publish the Decision