Decision for dispute CAC-UDRP-103055

Case number	**CAC-UDRP-103055**
Time of filing	**2020-05-13 08:47:33**
Domain names	**boegringer-ingelheim.com, boheringer-ingelhem.com**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**Boehringer Ingelheim Pharma GmbH & Co.KG**

Complainant representative

Organization	**Nameshield (Enora Millocheau)**

Respondent

Organization	**Sugarcane Internet Nigeria Limited**

OTHER LEGAL PROCEEDINGS

To the best knowledge of the Complainant, no other legal proceeding has been commenced/or is pending or decided in relation to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant proved to be the owner of the international registration no. 221544 for the trademark "Boehringer-Ingelheim" in classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30 and 32.

The Complainant also proved to own the domain name <boehringer-ingelheim.com> registered on September 1st, 1995.

FACTUAL BACKGROUND

The Complainant is a German based company active in the field of human pharmaceuticals, animal health and biopharmaceuticals. The Complainant states that the company achieved sales of around 18,997 million euros in 2019.

The Complainant owns a large trademark portfolio including the trademark "BOEHRINGER INGELHEIM" protected in several countries, including the international registration no. 221544 dating back to July 2nd 1959.

The Complainant also owns numerous domain names incorporating "BOEHRINGER INGELHEIM" including <boehringer-ingelheim.com> registered in September 1st, 1995.

The disputed domain names were both registered on May 5th, 2020 and resolve to a parking page with commercial links.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant claims that the disputed domain names are confusingly similar to its prior trademark and domain name as the addition/substitution of some letters is not sufficient to exclude confusing similarity with BOEHRINGER-INGELHEIM.

The Complainant supports its allegations citing several UDRP decisions which confirmed that misspelling of the complainant's trademark does not prevent domain names from being confusingly similar to the trademarks.

Finally, the Complainant contends that TLD are disregarded when assessing confusing similarity as they are considered as standard registration requirements.

The Complainant claims that the Respondent has no rights nor legitimate interest in registering the disputed domain name. According to the Complainant assertions, there is no evidence that the Respondent is known as the disputed domain names or is, in some way, authorized to use the BOEHRINGER INGELHEIM trademark.

Finally, the actual use of the disputed domain names is not considered a "bona fide offering of goods or services" or a "legitimate noncommercial or fair use" for the purposes of the Policy.

As regards registration and use in bad faith, the Complainant claims that since the BOEHRINGER INGELHEIM trademark is widely known, it is reasonable to infer that the Respondent has registered the disputed domain names with full knowledge of the Complainant's rights.

Moreover, the fact that the domain name links to a PPC webpage is considered an additional index of use in bad faith.

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 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

1. The disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

The Complainant has successfully proved to be the owner of the trademark BOEHRINGER INGELHEIM and of the domain name <<boehringer-ingelheim.com>.

The disputed domain names are composed by the elements "BOEGRINGER-INGELHEIM" and "BOHERINGER-INGELHEM". The Panel finds that the trademark “BOEHRINGER INGELHEIM” is fully recognizable in both disputed domain name and that the substitution of the letter "H" by the letter "G", the reversal of the letter "H" and "E" and the deletion of the letter "I" do not have a significant impact in the confusing similarity assessment.

According to a consolidated case law in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in it, the confusing similarity threshold is met.

Furthermore, the addition of “.com” is generally disregarded in view of its technical function.

As a consequence, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain names.

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in the Domain Name. Once such a prima facie case is made, the respondent carries the burden of demonstrating its 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.

In this case, the Panel finds that the Complainant’s submitted evidence and allegations are sufficient to establish a prima facie case of Respondent’s lack of rights and legitimate interests in the disputed domain names.

According to the information provided by the Complainant and not contested by the Respondent, Sugarcane Internet Nigeria Limited is not commonly known by the disputed domain name nor it is authorized to use the Complainant’s trademarks.

Additionally, the disputed domain name links to a PPC webpage and such links are related to the Complainant's business.

The Panels finds that such use discloses an absence of a bona fide offering of goods or services and of a legitimate noncommercial/ fair use of the disputed domain name. In the view of the Panel, given the distinctiveness of the Complainant's trademarks, the sponsored links are used by the Respondent to capitalize on the reputation and goodwill of the "BOEHRINGER INGELHEIM" trademark.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain names for the purposes of the Policy.

3. The disputed domain names have been registered and are being used in bad faith.

The Panel finds the following circumstances as material in order to establish the Respondent's bad faith in the registration of the disputed domain names:

(i) the disputed domain names were registered well after the Complainant acquired rights on the trademark BOEHRINGER INGELHEIM;

(ii) the Complainant's trademark is widely known as confirmed by previous Panels (CAC Case No. 102864). The reputation of the trademark BOEHRINGER INGELHEIM makes it very improbable that the Respondent was not aware of the Complainant's

exclusive rights on the trademark at the time of the registration of the disputed domain names;

(iii) the disputed domain names are clear and obvious misspellings of the Complainant's trademark (i.e. typosquatting).

Previous panels found that typosquatting discloses an intention on the part of the respondent to confuse users seeking or expecting to find a website related to the complainant.

As regards use in bad faith, the disputed domain names currently resolve to PPC webpages. The links sponsored through the disputed domain names are all related to the Complainant's business. As a consequence the Panel finds that the disputed domain names are used to exploit the reputation and distinctiveness of the Complainant's trademark for the Respondent's commercial gain and such use is considered in bad faith,

All above considered the Panel finds the evidence submitted as sufficient to prove use and registration of the disputed domain names in bad faith for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEGRINGER-INGELHEIM.COM**: Transferred
2. **BOHERINGER-INGELHEM.COM**: Transferred

PANELLISTS

Name	**Andrea Mascetti**

DATE OF PANEL DECISION 2020-06-17

Publish the Decision