Decision for dispute CAC-UDRP-103212

Case number	CAC-UDRP-103212
Time of filing	2020-07-29 13:11:05
Domain names	boehringerlngelheim.com

Case administrator

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

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	king kong

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant provided evidence that it owns a trademark and domain name containing the letters “Boehringer Ingelheim". Further "Boehringer Ingelheim" is the company name and well-known. The Complainant registered the Boehringer-Ingelheim trademark which is valid and registered well before the Respondent registered the disputed domain name.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is an international pharmaceutical company based in Ingelheim am Rhein, Germany. The Complainant is under his company name Boehringer Ingelheim active in the pharmaceutical business for many decades and has as group about 50.000 employees.

The Respondent is a domain holder in the U.S. The Respondent registered the disputed domain name. He linked the disputed domain to a website which is not active. This mislead internet traffic damages the reputation of Complainant.

The disputed domain name is a case of typosquatting. This practical is considered as a hallmark of Policy § 4(a) (iii) bad faith.

Please see for instance for instance CAC Case No. 102708, Boehringer Ingelheim Pharma GmbH & Co.KG v. stave co ltd <boehrinqer-ingelheim.com> (It is the common view among UDRP panelists that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name, see Edmunds.com, Inc. v. Digi Real Estate Foundation, WIPO Case No.D2006-1043, <edmundss.com>. The disputed domain name is such a typosquatting domain and is accordingly confusingly similar to the trademark of the Complainant.").

Please see for instance 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 § 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy § 4(c)(ii).").

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 § 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 § 4(a)(ii).").

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.").

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.")

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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).

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).

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).

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

It is necessary for the Complainant, if it is to succeed in this administrative proceeding, to prove each of the three elements referred to in paragraph 4(a) of the Policy, namely that:

(i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel finds that the disputed domain name <BOEHRINGERLNGELHEIM.COM> is confusingly similar to the company name and the trademark of the Complainant. Indeed, the Complainant contends the deletion of the hyphen and substitution of the letter "I" by the letter "L" in the trademark BOEHRINGER-INGELHEIM and the use of the gTLD ".COM" are not sufficient to escape the finding that the disputed domain name 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. Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names associated.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Further it argues that the Respondent is not related to the Complainant.

Moreover, the Complainant contends and provides evidence that the disputed domain name is not in use but misleading users by typosquatting. 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. 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 § 4(a)(ii).").

The Complainant further rightfully contends that the Respondent has not developed a legitimate use in respect of the disputed domain name. The Complainant contends that the Respondent was seeking to use the disputed domain name only to divert consumers and that the Respondent has no legitimate interests in respect of the disputed domain name.

In lack 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 name <BOEHRINGERLNGELHEIM.COM>. Please see for instance: 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.").

The Complainant also asserted and proved that the Respondent tried to attract internet users by creating a likelihood of confusion with the Complainant's trademarks including Complainants company name. The Complainant rightfully contended that <BOEHRINGERLNGELHEIM.COM> is confusingly similar to the prior trademark BOEHRINGER-INGELHEIM of the Complainant. The Complainant also referred to the distinctiveness and reputation of its trademark.

This makes it highly unlikely that the Respondent had no knowledge of the Complainant's prior trademark rights at the time of registration of the disputed domain name. The Complainant rightfully contended that the Respondent has used the disputed domain name <BOEHRINGERLNGELHEIM.COM> intentionally to attract visitors by creating confusion with the Complainant's trademarks, and that the Respondent has used the disputed domain name with that intention, namely in bad faith. Had the Respondent e.g. wanted to present a bona fide criticism site then it would have been well advised to have included some negative modifier in its domain name and to have restricted itself to objective and reasoned criticism on its website. Reference is made also to: CAC case no. 101036, Boehringer Ingelheim Pharma GmbH & Co. KG vs. SKYRXSHOP - dulcolax.xyz, WIPO Case no. D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA and CAC Case no. 101870, ArcelorMittal SA vs. foundationfe - ARCELURMITTAL.COM.

Furthermore, the Respondent is using a hidden identity. But this argument is not to be discussed further because bad faith is evident, whatsoever.

Accordingly, the Panel finds that the disputed domain name was both registered and used in bad faith and that the Complaint succeeds under the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERLNGELHEIM.COM**: Transferred

PANELLISTS

Name	**Dr. jur. Harald von Herget**

DATE OF PANEL DECISION 2020-09-11

Publish the Decision