Decision for dispute CAC-UDRP-103370

Case number	CAC-UDRP-103370
Time of filing	2020-10-30 09:20:50
Domain names	boehlinger-ingelheim.com

Case administrator

Organization	Denisa Bilík (CAC) (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 are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

Among others, the Complainant is the owner of the following International registered trademark:

BOEHRINGER-INGELHEIM, word mark, registered on July 2, 1959 under number 221544 in use classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30, and 32, and designated in respect of 16 territories.

FACTUAL BACKGROUND

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

The Complainant is a German family-owned pharmaceutical group of companies with roots dating back to 1885. It has around 51,000 employees, revenues of EUR 19 million and specializes in human pharmaceuticals, animal health and biopharmaceuticals. It is one of the world's 20 leading pharmaceutical companies.

The Complainant is the owner of various registered trademarks for BOEHRINGER-INGELHEIM including international registered trademark no. 221544 for the word mark BOEHRINGER-INGELHEIM, registered on July 2, 1959.

The Complainant is the registrant of the domain name <boehringer-ingelheim.com>, registered on September 1, 1995.

The disputed domain name was registered on October 21, 2020 and resolves to a page with the appearance of a parking page with commercial links, but the links do not redirect to any other website. MX records have also been configured.

The disputed domain name contains an obvious misspelling of the Complainant's BOEHRINGER-INGELHEIM registered trademark. It is a clear case of "typosquatting". The deletion of the hyphen and substitution of the letter "r" by the letter "l", and the use of the generic Top-Level Domain ".com" are insufficient to escape a finding of confusing similarity. The overall impression is that the disputed domain name is connected to the said mark.

The Respondent is not commonly known as the disputed domain name, but uses the term "king kong". The Respondent is not related in any way to the Complainant. The Complainant does not carry out any activity with, nor has any business with the Respondent. Neither license nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademark or to apply for registration of the disputed domain name. The disputed domain name is a typosquatted version of the Complainant's trademark and typosquatting can be evidence of a lack of rights and legitimate interests on the part of a respondent.

Given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark. The Respondent has also been involved in a previous case under the Policy brought by the Complainant, namely Boehringer Ingelheim Pharma GmbH & Co. KG v. king kong, CAC Case No. 103212.

The disputed domain name was intentionally designed to be confusingly similar to the Complainant's mark and past panels have seen such actions as evidence of bad faith. The disputed domain name resolves to a parking page with commercial links but without any active links, and MX servers are configured. It is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by way of passing off, an infringement of consumer protection legislation or an infringement of the Complainant's rights under trademark law.

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

The Panel is satisfied that the second level of the disputed domain name contains a typographical variant of the Complainant's BOEHRINGER-INGELHEIM registered trademark in which the hyphen has been deleted and the first letter "r" substituted by the letter "l". The Complainant's said mark is still fully recognizable within the disputed domain name despite such deletion and substitution. The generic Top-Level Domain, in this case ".com", is typically disregarded for the purposes of the comparison exercise. In these circumstances the Panel finds that the disputed domain name is confusingly similar to the Complainant's mark.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name based upon its various assertions. The Complainant asserts that the Respondent is not commonly known by the disputed domain name, is not related in any way to the Complainant, has no business or other activity with the Complainant and has not been granted any license or other authorization to use the Complainant's mark or to apply for the disputed domain name. The Panel also accepts the Complainant's contention that the disputed domain name is a typosquatted version of the Complainant's trademark, which can on its own be evidence of a lack of rights and legitimate interests on the part of a respondent.

The Respondent has failed to file a Response in this case and accordingly has provided no submissions or evidence which would serve to rebut the Complainant's prima facie case. Accordingly, the Respondent having failed to rebut the Complainant's prima facie case, and there being no facts or circumstances on the present record indicating that the Respondent may otherwise have rights or legitimate interests in the disputed domain name, the Panel finds that the Respondent has no such rights or legitimate interests therein.

The Panel accepts the Complainant's submission that the disputed domain name has been registered and is being used in bad faith. The disputed domain name is a close typographical variant of the Complainant's BOEHRINGER-INGELHEIM registered trademark. A previous panel under the Policy has determined that such trademark is both distinctive and well-established (see, Boehringer Ingelheim Pharma Gmbh & Co. Kg. v. Teck Keong Fong, WIPO Case No. D2020-1867). Equally, the Complainant itself is well-known worldwide and has been in operation for many years (see Boehringer Ingelheim Pharma GmbH & Co. KG. v. Whoisguard Protected, Whoisguard, Inc. / J Gates, My Domain Estates, WIPO Case No. D2015-1542). Finally, it should be noted that the Respondent has previously targeted the Complainant's rights with a typographical variant domain name in connection with which a finding of registration and use in bad faith was made (see Boehringer Ingelheim Pharma GmbH & Co.KG v. king kong, CAC Case No. 103212).

In all of the above circumstances, it is reasonable to infer that the Respondent had knowledge of the Complainant and of its rights when it registered the disputed domain name. It is likewise reasonable to infer that the Respondent intended to target the Complainant's rights in bad faith for its own commercial benefit, given that the Respondent has selected an obvious typographical variant of the Complainant's mark in the disputed domain name and has partially configured this to display pay-per-click links. The fact that these links are not currently live does not in itself contradict the apparent bad faith motivation on the Respondent's part. There is evidence both in the present case and in Boehringer Ingelheim Pharma GmbH & Co.KG v. king kong, supra, that the Respondent has taken steps to conceal its identity. This is also indicative of registration and use in bad faith in the circumstances of the present case as it suggests that the Respondent is attempting to avoid or frustrate remedial action being brought against it, possibly with a view to extending the time during which it may receive Internet traffic to the website associated with the disputed domain name.

Finally, the Panel accepts the Complainant's contention 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.

In failing to file any Response, the Respondent has not availed itself of the opportunity to address the Complainant's contentions or to advance any explanation for the registration and use of the disputed domain name which might have indicated that its actions were in good faith. On the basis of the present record, and in the absence of such a Response, the Panel cannot conceive of any reasonable explanation which might have been tendered by the Respondent regarding its registration or use of the disputed domain name. Accordingly, the Panel finds that the disputed domain name was registered and has been used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Andrew Lothian**

DATE OF PANEL DECISION 2020-11-20

Publish the Decision