Decision for dispute CAC-UDRP-103434

Case number	CAC-UDRP-103434
Time of filing	2020-11-27 10:18:09
Domain names	b0ehringer-ingelhelm.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	brenda llc

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

The Complainant invokes two registered trademarks in this case:

- BOEHRINGER-INGELHEIM., international trademark No. 221544 registered since July 2, 1959 in classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30 and 32, and covering various countries; and
- BOEHRINGER INGELHEIM, international trademark No. 568844 registered since March 22, 1991 in classes 1, 2, 3, 4, 5, 9, 10, 16, 30 and 31, and covering various countries.

FACTUAL BACKGROUND

The Complainant is part of a family-owned pharmaceutical group of companies with roots going back to 1885. The Complainant's group has become a global research-driven pharmaceutical enterprise with about 51,000 employees. The main business areas of the Complainant are human pharmaceuticals, animal health and biopharmaceuticals. In 2019, net sales of the Complainant's group of companies amounted to approximately EUR 19 billion.

The Complainant is the owner of registered marks comprising the terms "BOEHRINGER INGELHEIM" in several classes in

numerous countries all over the world. The Complainant also owns domain names comprising the same terms, such as <boehringer-ingelheim.com> registered since 1995.

The disputed domain name <b0ehringer-ingelhelm.com> was registered on November 20, 2020 and resolves to a registrar parking page. The Complainant provides evidence showing that the email function of the disputed domain name was enabled.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been authorized to register or use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew of the existence of the Complainant's trademark. The Complainant further contends that the Respondent has used the disputed domain name 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.

RESPONDENT:
The Respondent did not reply to the Complainant's contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity or confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. The Complainant has clearly established that there are BOEHRINGER-INGELHEIM trademarks in which it has rights. The Complainant's BOEHRINGER-INGELHEIM trademark has been registered and used in connection to the Complainant's pharmaceuticals business.

The disputed domain name <b0ehringer-ingelhelm.com> appears to be an obvious misspelling of the Complainant's trademark by substitution of similar-appearing characters. The letter "o" in the first term has been replaced by the number "0", and the second "i" in the second term has been replaced by the letter "L" in lower case. This practice is commonly referred to as "typosquatting".

The Panel finds that these small changes do not prevent the disputed domain name from being confusingly similar and even virtually identical to the Complainant's trademark (see section 1.9 of the WIPO Overview 3.0; Boehringer Ingelheim Pharma GmbH & Co.KG v. stave co ltd, CAC Case No. 102708, <boehrinqer-ingelheim.com>).

It is well established that the Top-Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

For these reasons, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "brenda llc". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Generally speaking, UDRP panels have found that domain names identical to a complainant's trademark carry a high risk of implied affiliation (see section 2.5.1 WIPO Overview 3.0). In this case, the Panel finds that the disputed domain name is

virtually identical to the Complainant's BOEHRINGER-INGELHEIM trademark as it simply substitutes 2 letters of the mark with similar-appearing characters, resulting in a high risk of implied affiliation.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. In fact, the Respondent is not making any use of the disputed domain name in connection with an active website.

The Respondent had the opportunity to demonstrate his rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070). In the instant case, the Panel finds it inconceivable that the Respondent was not aware of the Complainant's rights at the moment it registered the disputed domain name. The disputed domain name is virtually identical to the Complainant's distinctive mark. Moreover, the well-known character of the Complainant's BOEHRINGER-INGELHEIM trademark has been confirmed by previous UDRP Panels:
- Boehringer Ingelheim Pharma GmbH & Co. KG v. Marius Graur, WIPO Case No. D2019-0208 ("Because of the very distinctive nature of the Complainant's trademark 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.");
- BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG v. Karen Liles, CAC Case No. 102274 ("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.").

UDRP panels have found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark:
- seeking to cause confusion for the respondent's commercial benefit, even if unsuccessful;
- the lack of a respondent's own rights to or legitimate interests in a domain name;
- absence of any conceivable good faith use (see section 3.1.4 WIPO Overview 3.0).

In the present case, the Panel finds that the very nature of the disputed domain name suggests an intention to cause confusion. The disputed domain name is virtually identical to the Complainant's trademark and main domain name <boehringer-ingelheim.com>. The uncontested lack of the Respondent's own rights to or legitimate interests in the disputed domain name has already been mentioned above. Finally, given the distinctive and well-known character of the Complainant's mark, the Panel finds it difficult to conceive any plausible good faith use of the disputed domain name by the Respondent in the future.

Moreover, the Complainant provides evidence showing that the email function of the disputed domain name was enabled. In the circumstances of this case, the Panel finds that the use of the disputed domain name for fraudulent activity cannot be excluded, e.g. by profiting of the likelihood of confusion with the Complainant's trademark and main domain name for

phishing activities through the sending of emails.

By failing to respond to the Complaint, the Respondent did not take any initiative to contest the foregoing. Pursuant to paragraph 14 of the Rules, the Panel may draw the conclusions it considers appropriate.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being 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. **B0EHRINGER-INGELHELM.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2021-01-04

Publish the Decision