

Decision for dispute CAC-UDRP-103566

Case number	CAC-UDRP-103566
Time of filing	2021-02-12 09:17:59
Domain names	boehringeringelhempetrebates.com, boehringeringelhrimpetrebates.com, boehringerringelheimpetrebates.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG
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Complainant representative

Organization	Nameshield (Enora Millocheau)
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Respondent

Organization	Fundacion Comercio Electronico
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is owner of a large portfolio of trademarks including the terms "BOEHRINGER INGELHEIM" registered in several countries, such as:

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

Furthermore, the Complainant owns multiple domain names comprising the terms "BOEHRINGER INGELHEIM", among which <boehringeringelheimpetrebates.com> registered since 14 August 2019.

The Complainant's rights are hereinafter referred to as the BOEHRINGER INGELHEIM Trademark.

FACTUAL BACKGROUND

The Complainant is one of the world's 20 leading pharmaceutical companies, founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein (Germany). The core businesses of the Complainant are human pharmaceuticals, animal health and biopharmaceuticals. The Complainant has 51,000 employees worldwide and, in 2019, its net sales amounted to Euros 19 billion.

The Complainant's domain name and the related website <boehringeringelheimpetrebates.com> are used to offer rebates on pet health products.

The disputed domain names were registered on 5 February 2020 and resolve to parking pages with commercial links.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

Parties' Contentions

Complainant:

The Complainant contends that the disputed domain names constitute misspelled versions of the BOEHRINGER INGELHEIM Trademark. Neither the addition of the terms "PETE REBATES", "PET REBATES" or "PE REBATES", nor the use of the TLD ".COM" are sufficient to escape the finding that the disputed domain names are confusingly similar to the Complainant's mark or change the overall impression of the designation as being connected to such mark.

The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent is not affiliated with, nor authorized by the Complainant in any way. The Complainant does not carry out any activity for, 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 apply for registration of the disputed domain names.

The Complainant finally contends that the Respondent's bad faith is demonstrated by the registration of disputed domain names with intentional misspellings of the Complainant's well-known trademark and thus the constructive knowledge on behalf of the Respondent of the Complainant's potential rights, as well as by the use of the disputed domain names resolving to parking pages with commercial links.

The Complainant, therefore, requests the transfer of the disputed domain names.

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 are 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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

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

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAMES TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in the BOEHRINGER INGELHEIM Trademark since 1959.

<boehringeringelhempeterebates.com> consist of the misspelled version of the BOEHRINGER INGELHEIM Trademark, i.e. the second "I" of the term "INGELHEIM" was deleted, and the addition of the terms "PETE REBATES".

<boehringeringelhrimpeterebates.com> consist of the misspelled version of the BOEHRINGER INGELHEIM Trademark, i.e. the second "E" of the term "INGELHEIM" was substituted with the letter "R", and the addition of the terms "PET REBATES".

<boehringerringelheimperebates.com> consist of the misspelled version of the BOEHRINGER INGELHEIM Trademark, i.e. a letter "R" was added to the term "BOEHRINGER", and the addition of the terms "PE REBATES".

A domain name which contains sufficiently recognizable aspects of the relevant mark and uses a common, obvious, or intentional misspelling of such trademark is considered by UDRP Panels confusingly similar to the relevant mark for purposes of the first element (see 1.9 WIPO Overview 3.0). Examples of such typos include: (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers. The practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors is commonly called typosquatting.

Same for the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to the relevant mark, which does not prevent a finding of confusing similarity under the first element (see 1.8 WIPO Overview 3.0).

UDRP Panels also agree that the TLD is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark as it is a technical requirement of registration (see 1.11.1 WIPO Overview 3.0).

Therefore, in assessing confusing similarity the Panel finds that the disputed domain names contain sufficiently recognizable aspects of the BOEHRINGER INGELHEIM Trademark and that the substitution or addition of letters and the addition of generic and descriptive terms neither affect the attractive power of such trademark, nor are sufficient to distinguish the disputed domain names from the Complainant's mark.

Hence, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain names are confusingly similar to the Complainant's mark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAMES

It is a consensus view of UDRP panels that the complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the respondent (see 2.1 WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.")

The disputed domain names were registered with privacy registration service. Upon receipt of CAC's request for registrar verification, the Registrar disclosed the underlying registration data, identifying as registrant Fundacion Comercio Electronico (Panama).

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register the disputed domain names.

There is no evidence that the Respondent has been commonly known by the disputed domain names or has acquired any rights in a trademark or trade name corresponding to the disputed domain names.

The disputed domain names, which are typosquatted versions of the Complainant's mark, resolve to parking pages with third parties' commercial links. Such use of the domain names is clearly not a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

Applying UDRP paragraph 4(c), UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see 2.9 WIPO Overview 3.0).

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the disputed domain names.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain names.

III. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAMES

The Respondent has registered the disputed domain names which are confusingly similar to Complainant's prior trademark, since they contain sufficiently recognizable aspects of the such mark and uses common, obvious, or intentional typos of such trademark, and are being used to resolve to parking pages with third parties' commercial links.

Given the good-will and reputation of the Complainant and the BOEHRINGER INGELHEIM Trademark, acquired over the years in the pharmaceuticals and confirmed by several UDRP decisions (inter alia, CAC Case No. 102274; WIPO Case No. D2019-0208), it is inconceivable that the Respondent could have registered the disputed domain names for a mere chance without actual knowledge of the Complainant and its mark and the intention to exploit such reputation by diverting traffic away from the Complainant's website.

In the present case it is clear that the Respondent has targeted the Complainant and its trademark and its intention with the registration and use of the disputed domain names is to create confusion with the Complainant's mark and its website <boehringeringelheimpetrebates.com> used to offer rebates on pet health products.

This finding is corroborated by the fact that the Respondent was involved in numerous similar typosquatting cases before the CAC introduced by the Complainant: CAC Cases No. 103516, 103498, 103453, 103455, 103404, 103270, 103181, 103124, 103132, 103065, 103009, 103018, 103010, 102988, 102969, 102995, 102959, 102945, 102950, 102940, 102929, 102862, 102875, 102871, 102872, 102854.

Therefore, this Panel retains that the Respondent is a serial typosquatter.

Considered all circumstances of the dispute, the Panel finds that the Respondent, by using the disputed domain names, has intentionally attempted to attract for commercial gain Internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location (paragraph 4(b)(iv) of the Policy).

The Complainant has, therefore, discharged the burden of proof to show that the disputed domain names have been registered and are being used in bad faith (paragraph 4(a)(iii) of the Policy).

The disputed domain names are to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINGELHEMPETEREBATES.COM**: Transferred
2. **BOEHRINGERINGELHRIMPETREBATES.COM**: Transferred
3. **BOEHRINGERRINGELHEIMPEREBATES.COM**: Transferred

PANELLISTS

Name	Avv. Ivett Paulovics
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DATE OF PANEL DECISION 2021-03-05

Publish the Decision
