

Decision for dispute CAC-UDRP-103570

Case number	CAC-UDRP-103570
Time of filing	2021-02-12 09:22:25
Domain names	boehringer-ingelheim.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	Joe Bob Concept View Ltd
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant owns a large portfolio of trademarks including the wording "BOEHRINGER INGELHEIM" in several countries, such as the international trademark BOEHRINGER-INGELHEIM n°221544, registered since July 2nd, 1959 and duly renewed, and the international trademark BOEHRINGER INGELHEIM n°568844 registered since March 22nd, 1991.

Furthermore, the Complainant owns multiple domain names consisting in the wording "BOEHRINGER INGELHEIM", such as <boehringer-ingelheim.com> registered since January 9th, 1995.

FACTUAL BACKGROUND

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

The disputed domain name <boehringer-ingelheim.com> was registered on February 5th, 2021. The disputed domain name resolves to a parking page with commercial links.

I. Domain name is confusingly similar to the protected mark

The Complainant states that the disputed domain name <boehringer-ingelheim.com> is confusingly similar to its trademark BOEHRINGER-INGELHEIM and its domain names associated therewith.

Indeed, the Complainant contends the addition of the letter “I” in the trademark BOEHRINGER-INGELHEIM and the use of the gTLD “.COM” are not sufficient to escape the finding that the domain name <boehringer-ingelheim.com> 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.

The disputed domain name <boehringer-ingelheim.com> constitutes a misspelled version of the Complainant’s registered trademark BOEHRINGER-INGELHEIM.

Thus, this is a clear case of “typosquatting”, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark. Previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusingly similar to the complainant’s trademark.

For instance CAC Case No. 102708, Boehringer Ingelheim Pharma GmbH & Co.KG v. stave co ltd <boehringer-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.”).

Moreover, past Panels commonly stated that the gTLD is not relevant in the appreciation of confusing similarity.

WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”)

Thus, the disputed domain name is confusingly similar to the Complainant’s trademark.

II. The Respondent does not have any rights or legitimate interest in the domain name

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., a Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, Respondent carries the burden of demonstrating 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 UDRP.

The Complainant contends that the Respondent is not known as the disputed domain name, but as “Joe Bob Concept View Ltd”. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name.

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 paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).”).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <boehringer-ingelheim.com> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOEHRINGER-INGELHEIM, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark BOEHRINGER-INGELHEIM. 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.

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 paragraph 4(a)(ii).").

Finally, the disputed domain name resolves to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. For instance:

- Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend (concluding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees);

- WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

Thus, the Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain name.

III. The domain name(s) has been registered and is being used in bad faith

The Complainant states that the disputed domain name <boehringer-ingelheim.com> is confusingly similar to its trademark BOEHRINGER-INGELHEIM.

The Complainant is one of the world's 20 leading pharmaceutical companies, with roughly 51,000 employees worldwide and around 19 million euros in net sales.

Given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

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.").

Therefore, by registering the domain name <boehringer-ingelheim.com> with the misspelling of the trademark BOEHRINGER-

INGELHEIM, the Complainant can state that this was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith.

For instance WIPO Case No. D2016-1546, Boehringer Ingelheim Pharma GmbH & Co. KG v. Martin Hughes <boehringer-ingelheim.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.").

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own websites thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith.

For instance WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in 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).

This is a case of "typosquatting", i.e. the disputed domain name contains an obvious misspelling of the Complainant's trademark. It is well established that the specific top level of a domain name such as ".com", does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

Previous panels have found that slight spelling variations does not prevent a domain name from being confusingly similar to the complainant's trademark. Adding and "i" in "INGELHEIM" for it to read "INGELHIEIM" does not take away the confusing similarity between the domain name and the trademark

Simple exchange or adding of letters is not a sufficient element to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and domain names.

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use his trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark BOEHRINGER-INGELHEIM and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name currently resolves to a parking page with commercial links. It is presumable that the Respondent uses the disputed domain name and its landing page with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Therefore, the Panel concludes that the disputed domain name is being used in bad faith.

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 three essential issues under the paragraph 4(a) of the Policy are whether:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests with respect to the disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is identical to the disputed domain name apart from an extra "i" added in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered and that the disputed domain name was therefore registered in bad faith. There present use of the disputed domain name for domain parking is deemed by this Panel to be use in bad faith. It is concluded that the Respondent makes bad faith use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGER-INGELHIEIM.COM**: Transferred

PANELLISTS

Name	Lars Karnoe
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DATE OF PANEL DECISION	2021-03-09
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Publish the Decision
