Decision for dispute CAC-UDRP-103558

Case number	CAC-UDRP-103558
Time of filing	2021-02-05 08:37:18
Domain names	boehrginer-ingelheim.com

Case administrator

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

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Sugarcane Internet Nigeria Limited

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 Reg. No. 221544, registered on July 2, 1959 and duly renewed; and the international trademark "BOEHRINGER INGELHEIM" Reg. No. 568844 registered on March 22, 1991.

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 going back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein. Ever since, the Complainant has become a global research-driven pharmaceutical enterprise and has today about roughly 51,000 employees. The three main business areas of the Complainant are: human pharmaceuticals, animal health and biopharmaceuticals. In 2019, the Complainant achieved net sales of around 19 million Euros.

The disputed domain name <boehrginer-ingelheim.com> was registered on May 5, 2020.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

i) The Complainant has rights in the BOEHRINGER-INGELHEIM mark (i.e. International Reg. No. 221544 registered on July 2, 1959); and the BOEHRINGER INGELHEIM mark (i.e., International Reg. No. 568844 registered on March 22, 1991) through its registration of the marks with the WIPO. The disputed domain name is confusingly similar to the Complainant's trademark BOEHRINGER-INGELHEIM.

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not commonly known by the disputed domain name; the Respondent 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; the disputed domain name is a typosquatted version of the Complainant's trademark BOEHRINGER-INGELHEIM.

iii) The Respondent has registered and is using the disputed domain name in bad faith: the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark; therefore by registering the disputed domain name with the misspelling of the trademark BOEHRINGER-INGELHEIM thereby intentionally designing to be confusingly similar with the Complainant's trademark; and the disputed domain name resolves to a parking page with commercial links.

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(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

(2) 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.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (Forum July 31, 2000- holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant contends that it has rights in the BOEHRINGER-INGELHEIM mark (i.e. International Reg. No. 221544 registered on July 2, 1959); and the BOEHRINGER INGELHEIM mark (i.e., International Reg. No. 568844 registered on March 22, 1991) through its registration of the marks with the WIPO. Registration of a mark with the WIPO sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the marks 'BOEHRINGER-INGELHEIM' and 'BOEHRINGER INGELHEIM.'

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant's trademark BOEHRINGER-INGELHEIM on the grounds that the misspelling of the trademark BOEHRINGER-INGELHEIM in the disputed domain name 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.

The Panel agrees with the Complainant, and thus it finds that the disputed domain name is confusingly similar to the Complainant's trademark BOEHRINGER-INGELHEIM.

No rights or legitimate interests

The Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy, then the burden shifts to the Respondent to show it does have rights or legitimate interests. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (the 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, the 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 Policy). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy paragraph 4(a)(ii) of the Policy).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not identified in the WHOIS database as the disputed domain name, and thus it is not commonly known by the disputed domain name; the Respondent 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; the disputed domain name is a typosquatted version of

the Complainant's trademark BOEHRINGER-INGELHEIM; and 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 disputed domain name.

The Panel notes that the Respondent has been identified as 'Randy Moore' and no information suggests that the Complainant has authorized the Respondent to use the BOEHRINGER-INGELHEIM mark in any way. Therefore, the Panel finds that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith: 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; therefore by registering the disputed domain name with the misspelling of the trademark BOEHRINGER-INGELHEIM thereby intentionally designing to be confusingly similar with the Complainant's trademark; the disputed domain name resolves to a parking page with commercial links; and consequently the Respondent registered the disputed domain name in bad faith and has used it 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, and thus acted in bad faith.

While constructive knowledge is insufficient to support a finding of bad faith, actual knowledge can be used to demonstrate a respondent's bad faith registration and use. See Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826 (Forum February 6, 2014- "The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding bad faith per paragraph 4(a)(iii) of the Policy, the Panel here finds actual knowledge through the name used for the domain and the use made of it."). The Panel infers, due to the notoriety of the Complainant's mark that the Respondent registered the disputed domain name with actual knowledge of the Complainant's rights in the BOEHRINGER-INGELHEIM mark and finds that it registered the disputed domain name in bad faith per paragraph 4(a)(iii) of the Policy.

Additionally, the Complainant argues that the Respondent registered and uses the disputed domain name in bad faith because the Respondent engages in typsoquatting. Typosquatting is itself evidence of bad faith per paragraph 4(a)(iii) of the Policy. See Homer TLC, Inc. v. Artem Ponomarev, FA1506001623825 (FORUM July 20, 2015) (“Finally, under this head of the Policy, it is evident that the<homededpot.com> domain name is an instance of typosquatting, which is the deliberate misspelling of the mark of another in a domain name, done to take advantage of common typing errors made by Internet users in entering into a web browser the name of an enterprise with which they would like to do business online. Typosquatting is independent evidence of bad faith in the registration and use of a domain name.”). The Complainant argues that the disputed domain name contains an obvious misspelling of the Complainant’s trademark, and thus this is a clear case of "typosquatting." The Panel notes that the disputed domain name is an instance of typosquatting which is the deliberate misspelling of the Complainant's mark in the disputed domain name, done to take advantage of common typing errors made by Internet users in entering into a web browser the name of an enterprise with which they would like to do business online. Typosquatting is independent evidence of bad faith in the registration and use of the disputed domain name, and thus the Panel finds bad faith per paragraph 4(a)(iii) of the Policy.

Further, the Complainant claims that the Respondent’s use of the disputed domain name to resolve to a parking page with commercial links is sufficient to establish the Respondent’s bad faith. Parking a confusingly similar domain name can evince bad faith per paragraph 4(a)(iii) of the Policy. See VideoLink, Inc. v. Xantech Corporation, FA1503001608735 (FORUM May 12, 2015) (“Failure to actively use a domain name is evidence of bad faith registration and use pursuant to paragraph 4(a)(iii) of the policy.”). Accordingly, the Panel agrees and finds that the Respondent’s use of the disputed domain name to host a parking page with commercial links provides evidence of bad faith per paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Mr. Ho-Hyun Nahm, Esq.**

DATE OF PANEL DECISION 2021-03-13

Publish the Decision