Decision for dispute CAC-UDRP-103574

Case number	CAC-UDRP-103574
Time of filing	2021-02-12 09:37:47
Domain names	boehringeringlheimpertrebates.com, boehringerringelheiimpetrebates.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	Fundacion Comercio Electronico

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 owns a large portfolio of trade marks consisting of the name BOEHRINGER INGELHEIM, including the international trade mark BOEHRINGER-INGELHEIM, registration number 221544, first registered on 2 July 1959 in international classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30 and 32; and the international trade mark BOEHRINGER INGELHEIM, registration number 568844, first registered on 22 March 1991 in international classes 1, 2, 3, 4, 5, 9, 10, 16, 30 and 31.

Furthermore, the Complainant owns multiple domain names consisting of the words “BOEHRINGER INGELHEIM”, including the domain name <boehringeringelheimpetrebates.com>, registered on 14 August 2019, which is connected to the official Boehringer Ingelheim Animal Health USA Inc. Rebate Center website.

FACTUAL BACKGROUND

The Complainant is a family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer in Ingelheim am Rhein in Germany. Today, the Complainant is one of the world’s 20 leading pharmaceutical companies with about 51,000 employees. The three business areas of Boehringer are human pharmaceuticals, animal health and bio pharmaceuticals. In 2019, net sales of the Boehringer group amounted to about EUR

19 billion.

The Respondent registered the disputed domain names <boehringeringlheimpertrebates.com> and <boehringerringelheiimpetrebates.com> on 5 February 2020. The disputed domain names both currently resolve to a parking page with commercial links. There is no evidence before the Panel that the disputed domain names have ever been used for active websites since they were registered.

PARTIES CONTENTIONS

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

With regard to the first UDRP element, the Panel finds that the disputed domain names <boehringeringlheimpertrebates.com> and <boehringerringelheiimpetrebates.com> are confusingly similar to the Complainant's trade marks BOEHRINGER INGELHEIM and BOEHRINGER-INGELHEIM. Indeed, the disputed domain names incorporate the Complainant's trade marks in their entirety, save for the dash, which is to be disregarded for the purpose of this analysis. The disputed domain names either delete the letter "E" or add the letters "R" or "I" in the Complainant's trade marks. The Panel considers this case to be a plain case of "typo squatting", i.e., the disputed domain names contain an obvious misspelling of the Complainant's trade marks, which is not sufficient to alter the overall impression of the designation as being connected to the Complainant’s trade marks; the deletion or addition of these letters respectively does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trade marks and associated domain names. The Panel follows in this respect the view established by numerous other decisions that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is to be considered to be confusingly similar to the relevant trade mark (see, for example, CAC Case No. 103124, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringeringelheimpetrreebates.com>; CAC Case No. 101990, JCDECAUX SA -v- Emma Purnell <jcdeceux.com>, and CAC case No. 101892, JCDECAUX SA -v- Lab-Clean Inc <jcdacaux.com>).

With regard to the second UDRP element, there is no evidence before the Panel to suggest that the Respondent has made any use of, or demonstrable preparations to use, the disputed domain names in connection with a bona fide offering of goods or services. Neither is there any indication that the Respondent is making legitimate non-commercial or fair use of the disputed domain names. Indeed, the disputed domain names are not being used for any active websites but resolve to a parking page with commercial links, which has in itself been regarded by other panels as supporting a finding that the respondent did not have a bona fide offering of goods or services or make legitimate non-commercial or fair use of the disputed domain names (see, for example, 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); and 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.")). The Panel further finds that the Respondent is not affiliated with or related to the Complainant in any way and is neither licensed nor otherwise authorised to make any use of the Complainant's trade marks or to apply for or use the disputed domain names. Finally, the Whois information does not suggest that the Respondent is commonly known by the disputed names <boehringeringlheimpertrebates.com> and <boehringerringelheiimpetrebates.com>. Absent any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

With regard to the third UDRP element, the Complainant's trade mark BOEHRINGER-INGELHEIM is a distinctive and well-known trade mark. Other Panels have confirmed the reputation of the trade mark BOEHRINGER-INGELHEIM inter alia in the following cases: WIPO Case No. D2019-0208, Boehringer Ingelheim Pharma GmbH & Co. KG v. Marius Graur <boehringer-ingelheim.world> and <boehringeringelheim.world> ("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"); and 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."). Given the distinctiveness of the Complainant's trade mark and its reputation, it is reasonable to infer that the Respondent has registered and is using the disputed domain names with full knowledge of the Complainant's trade marks.

Furthermore, the websites related to the disputed domain names currently resolve to a parking page with commercial links. Based on the decisions of other panels in similar cases, the Panel accepts the Complainant's submissions that the Respondent's attempt to attract Internet users for commercial gain to its own websites based on the Complainant's trade marks is evidence of bad faith (see, for example, 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.")).

Finally, the Respondent has already been involved in other UDRP complaints filed by the Complainant, see CAC Case No. 102854, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico ("The Panel has reasons to presume 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.").

Absent any response from the Respondent, or any other information indicating the contrary, the Panel therefore also accepts that the Respondent has registered and is using the disputed domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINGLHEIMPERTREBATES.COM**: Transferred
2. **BOEHRINGERRINGELHEIIMPETREBATES.COM**: Transferred

PANELLISTS

Name	**Gregor Kleinknecht**

DATE OF PANEL DECISION 2021-03-18

Publish the Decision