

Decision for dispute CAC-UDRP-103601

Case number	CAC-UDRP-103601
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Time of filing	2021-02-25 09:28:22
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Domain names	boehringerengelheimuinerebates.com, boehringeringellheimperebates.com
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Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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 pending or decided legal proceedings relating to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant owns a portfolio of trademarks including the terms “BOEHRINGER INGELHEIM” in several countries, such as:

- International trademark “BOEHRINGER-INGELHEIM” n° 221544, registered since July 2, 1959; and,
- International trademark “BOEHRINGER INGELHEIM” n° 568844 registered since March 22, 1991.

FACTUAL BACKGROUND

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

The Complainant is a family-owned pharmaceutical group of companies with roots going back to 1885, 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 business areas of the Complainant are human pharmaceuticals, animal health, and biopharmaceuticals. In 2019, net sales of the Complainant group amounted to about EUR 19 billion.

The Complainant owns multiple domain names consisting of the wording "BOEHRINGER INGELHEIM", such as <boehringeringelheimpetrebates.com> registered and used since August 14, 2019.

The disputed domain name <boehringeringellheimperebates.com> was registered on February 18, 2021, and the disputed domain name <boehringeringelheimeuinerebates.com> was registered on February 19, 2021 (collectively "disputed domain names"). They resolve to a parking page with commercial links.

PARTIES CONTENTIONS

COMPLAINANT

1. The disputed domain names are confusingly similar to the protected mark

The Complainant states that the disputed domain names are confusingly similar to its trademark "BOEHRINGER-INGELHEIM".

Indeed, the addition of the letter "L" to the trademark "BOEHRINGER-INGELHEIM" and the deletion of the hyphen is not sufficient to escape the finding that the disputed domain name <boehringeringellheimperebates.com> is confusingly similar to its trademarks. It does not change the overall impression of the designation as being connected to the Complainant's trademarks. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademarks, and domain names associated.

Besides, the addition of the terms "PE REBATES" or "EUINE REBATES" is not sufficient to escape the finding that the disputed domain names are confusingly similar to the trademark "BOEHRINGER-INGELHEIM". It does not change the designations' overall impression as being connected to the Complainant's trademark "BOEHRINGER-INGELHEIM". It does not prevent the likelihood of confusion between the disputed domain names and the Complainant and its trademark.

On the contrary, the addition of the terms "PE REBATES" or "EUINE REBATES" worsens the likelihood of confusion, as it directly refers to the Complainant's websites at the domain names <boehringeringelheimpetrebates.com> and <boehringeringelheimequinerebates.com>.

Moreover, the Complainant asserts that the addition of the generic Top-Level Domain suffix ".COM" does not change the designations' overall impression as being connected to the trademark "BOEHRINGER-INGELHEIM". It does not prevent the likelihood of confusion between the disputed domain names and the Complainant and its trademarks.

Consequently, the disputed domain names are confusingly similar to the Complainant's trademark.

2. The Respondent does not have any rights or legitimate interest in the disputed domain names

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain names. Past panels have held that a respondent is not commonly known as a domain name if the WHOIS information was not similar to the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests regarding the disputed domain names. 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 trademarks "BOEHRINGER-INGELHEIM" or apply for registration of the disputed domain names by the Complainant.

Furthermore, the disputed domain names resolve to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate noncommercial or fair use.

Thus, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain names per the foregoing.

3. The disputed domain names have been registered and are being used in bad faith.

The Complainant states that the disputed domain names are 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 19 billion euros in net sales.

The Complainant's trademark "BOEHRINGER-INGELHEIM" is distinctive and well-known. Past Panels have confirmed the notoriety of the Complainant's trademarks.

The Complainant contends that the Respondent choose to register the disputed domain names to create confusion with the domain names <boehringerengelheimpetrebates.com> and <boehringerengelheimequinerebates.com>, used by the Complainant to offer rebates on pet and equine health products.

Consequently, given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain names with full knowledge of the Complainant's trademark.

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

Finally, the Respondent has already been involved in numerous cases against the Complainant. Please see for instance CAC Case No. 103124, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringerengelheimpetrreebates.com>, CAC Case No. 103498, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringerengelheimpetrbates.com>.

On these bases, the Complainant concludes that the Respondent has registered and uses the disputed domain names in bad faith.

RESPONDENT

No administratively compliant Response has been filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain names are identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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 the Policy were met, and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has shown it owns rights in the “BOEHRINGER-INGELHEIM” trademark, with the earliest registration dating back to 1959.

The Panel must now analyze if there is a confusing similarity between the disputed domain names and the trademark. Per the evidence contained in the record, the disputed domain names appear at first sight to reproduce the trademark in its totality, namely, “BOEHRINGER INGELHEIM.” In the case of the first disputed domain name, <boehringeringelheimeuinerebates.com>, the trademark is reproduced verbatim with the addition of the term “euinerebates”. This term's addition is not substantive enough to dispel the confusing similarity between the first disputed domain name and the Complainant's trademarks. In fact, this addition may enhance the confusing similarity with the Complainant's trademarks, as it aims to replicate a domain name used by the Complainant through its business, namely <boehringeringelheimequinerebates.com>. However, further analysis will be discussed under the subsequent elements below.

Concerning the second disputed domain name, namely, <boehringeringellheimperebates.com>, it appears that the trademark is reproduced quasi-verbatim with the addition of a second letter “l” in the second element of the trademark. The second letter “l” is not substantive enough to dispel the confusing similarity between the second disputed domain name and the Complainant's trademarks. In this case, the letter's addition seems to fall squarely in the category of typosquatting, the bread, and butter meant to be addressed by the Policy. Additionally, the second disputed domain name adds the term “perebates” following the Complainant's trademark reproduction. As in the first disputed name above, this addition may enhance the confusing similarity with the Complainant's trademarks. It aims to replicate a Complainant's domain name through its business, namely <boehringeringelheimpetrebates.com>. However, further analysis on this will be discussed in the analysis of the subsequent elements below.

Based on this, the Panel finds the disputed domain names to be confusingly similar to the Complainant's trademarks. As a result, the Panel determines that the Complaint has satisfied the first element set under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence on record, and acknowledging that the Respondent failed to produce allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain names, the uncontested facts indicate that a) the Respondent is not commonly known by the disputed domain names; b) the Respondent is not affiliated with the Complainant; c) it is not authorized to carry out any activity for the Complainant; d) has no business dealings with the Complainant and e) the Respondent has no license or authorization to use the trademarks.

The Respondent fails to respond to the Complainant's contentions and has not rebutted the prima facie case.

Additionally, and as described in 2.9 of WIPO 3.0 Overview, the Panel is persuaded by the argument by the Complainant that in this case, the disputed domain names hosting parked pages comprising pay-per-click links (PPC links) does not represent a bona fide offering being that it seems that the Respondent is aiming to capitalize on the reputation and goodwill of the Complainant's mark or otherwise mislead Internet users.

Finally, in the abundance of caution, there is no other available evidence on record that would otherwise allow the Panel to find any rights or legitimate interests for the Respondent in the disputed domain names.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names. Therefore the

Complainant has fulfilled the second requirement set under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

As per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and targeted the Complainant's trademark when registering the disputed domain names. This conclusion is reinforced by the fact that the Respondent seems to evoke a connection to the Complainant's trademark by including the trademark in its entirety and in one case with a slight variation that could be adduced to typosquatting (see the discussion under the first element above). Additionally, the Respondent is utilizing two forms of additional instances of typosquatting in the disputed domain that appear to be meant to mislead Internet users that the disputed domain names have a connection with the Complainant. In the first disputed domain name, <boehringerengelheimeuinerebates.com>, it appears the Respondent aims to replicate a domain name used by the complainant through its business, namely <boehringerengelheimequinerebates.com>. In the case of the second disputed domain name, it appears the Respondent aims to replicate a domain name used by the complainant through its business, namely <boehringerengelheimperebates.com>. In both instances, it is more than likely that the Respondent was aware of the Complainant and specifically targeted the Complainant with the intention of attracting, "for commercial gain, Internet users to its website or other on-line 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" as clearly described under paragraph 4(b) of the Policy and 3.1 of WIPO 3.0 Overview.

Additionally, as presented by the Complainant and available in the evidence on record, the Respondent seems to have engaged in a pattern of conduct in at least two documented instances, which in conjunction with the other facts and evidence, in this case, strengthens the allegations and the points raised by the Complainant.

Accordingly, the Panel finds that the Complainant has satisfied the requirements set forth under paragraph 4(a)(iii) of the Policy.

D. Decision

For the preceding reasons and as per the provisions contained under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain names to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINGELHEIMEUINEREBATES.COM**: Transferred
2. **BOEHRINGERINGELLHEIMPEREBATES.COM**: Transferred

PANELLISTS

Name	Rodolfo Carlos Rivas Rea
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DATE OF PANEL DECISION	2021-03-24
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Publish the Decision
