

Decision for dispute CAC-UDRP-103637

Case number	CAC-UDRP-103637
Time of filing	2021-03-08 00:00:00
Domain names	boehringeringelheimequinerebates.com

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 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 terms "BOEHRINGER INGELHEIM" in several countries, such as:

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

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

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, when it was founded

by Albert Boehringer (1861-1939) in Ingelheim am Rhein. Ever since, BOEHRINGER INGELHEIM has become a global research-driven pharmaceutical enterprise and has today about roughly 51,000 employees. The three business areas of BOEHRINGER INGELHEIM are human pharmaceuticals, animal health and biopharmaceuticals. In 2019, net sales of the BOEHRINGER INGELHEIM group amounted to about EUR 19 billion.

The disputed domain name was registered on March 1, 2021 and resolves to a parking page with commercial links.

The Complainant states that the disputed domain name is confusingly similar to its trademark BOEHRINGER-INGELHEIM and its domain names associated.

The Complainant contends the misspelling of the trademark BOEHRINGER-INGELHEIM (the reversal of the letter "E" and "L") is 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.

Moreover, in the view of Complainant the addition of the terms "EQUINE REBATES" is not sufficient to escape the finding that the domain name 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 name and the Complainant, its trademarks and domain names associated.

On the contrary, this addition worsens the likelihood of confusion, as it directly refers to the Complainant's website <https://www.boehringeringelheimequinerebates.com>.

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

Consequently, the disputed domain name is in the view of Complainant confusingly similar to the Complainant's trademark.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. 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.

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 in respect of the disputed domain name. 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 name by the Complainant.

Furthermore, 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.

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

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

Besides, the Complainant contends that the Respondent choose to register the domain name to create a confusion with the domain name <[boehringeringelheimequinerebates.com](https://www.boehringeringelheimequinerebates.com)>, used by the Complainant to offer rebates on equine health

products.

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

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends that 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.

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).

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

A. The disputed domain name is confusingly similar to the protected mark

The Complainant has rights in the mark BOEHRINGER INGELHEIM by virtue of its registered trademarks.

The Complainant clearly has trademark rights and the Complainant's trademark rights have also been confirmed by previous panels, e.g. CAC Case No. 101420 (<boehringeringelheiminc.com>); CAC Case No. 101436 (<boehringer-ingl1heim.com>) and BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546.

The Panel finds the disputed domain name is confusingly similar to the Complainant's trademarks.

As stated in BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546: "it is well-established 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" (quoting paragraph 1.10 of the WIPO Overview 2.0).

The disputed domain name incorporates the Complainant's BOEHRINGER INGELHEIM marks in its entirety. The difference

between the disputed domain name and the Complainant's BOEHRINGER INGELHEIM trademark is the order of the letters "LI" ("ingleheim" instead of "ingelheim"), which is an obvious misspelling of the Complainant's trademark and does not change the overall impression of the trademark.

Moreover, the addition of the terms "EQUINE REBATES" is not sufficient to escape the finding that the disputed domain name 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 name and the Complainant, its trademarks and domain names associated.

The gTLD suffix ".com" is to be generally disregarded under the confusing similarity test.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

- (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
- (ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see *Julian Barnes v. Old Barn Studios*, WIPO Case No. D2001-0121; *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110 and CAC Case No. 101284 (<salomontw.com>).

The Complainant states that the Respondent does not have any business relationships with the Complainant.

According to the evidence provided by the Complainant the disputed domain name is not linked with an active website.

The Panel agrees that this could not constitute legitimate, non-commercial or fair use of the disputed domain name or otherwise create rights or legitimate interests under the circumstances of the case.

Previous UDRP case law supports the view of the Complainant (see e.g. *Express Scripts, Inc. v. Windgather Investments Ltd. / Mr. Cartwright*, WIPO Case No. D2007-0267 and FA 918556, National Arbitration Forum, *Disney Enters., Inc. v. Kamble*) and the Panel finds that the Complainant has provided sufficient prima facie evidence of the Respondent's lack of rights or legitimate interests in the disputed domain name.

The Respondent failed to respond.

The Panel, therefore, finds that the Complainant has shown a prima facie case that has not been rebutted by the Respondent and, therefore, satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

The Panel finds that the evidence submitted by the Complainant supports a finding of bad faith under paragraph 4(b)(iv) of the Policy, because the registration of the disputed domain name which contains obvious misspelling of the Complainant's trademark and which is virtually identical to the Complainant's domain name constitutes registration and use in bad faith

(see, Go Daddy Software, Inc. v. Daniel Hadani, WIPO Case No. D2002-0568 (where the panel found that typosquatting is virtually per se registration and use in bad faith – see BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546).

The Panel finds that given the distinctiveness of the Complainant's trademarks and business name, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks and with the clear intention of taking advantage of the Complainant's marks and reputation.

Besides, the Respondent choose to register the disputed domain name to create a confusion with the domain name <boehringeringlehmequinerebates.com>, used by the Complainant to offer rebates on equine health products.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Panel finds that 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 also an evidence of bad faith.

The Panel holds that the third requirement of the Policy has been satisfied.

On these bases, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINGLEHEIMEQUINEREBATES.COM**: Transferred

PANELLISTS

Name	Jan Christian Schnedler, LL.M.
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DATE OF PANEL DECISION 2021-03-31

Publish the Decision