

Decision for dispute CAC-UDRP-103619

Case number	CAC-UDRP-103619
Time of filing	2021-03-03 09:18:14
Domain names	boehrInger-ingellheim.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

Name	Tywan Lawson
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states, and provides evidence to support, that it is the owner of “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 2, 1959 and duly renewed, and the international trademark BOEHRINGER INGELHEIM® n°568844 registered since March 22, 1991.” These marks are referred to hereafter as the “BOEHRINGER-INGELHEIM Trademark.”

FACTUAL BACKGROUND

Complainant states that it “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 has become a global research-driven pharmaceutical enterprise and has today about roughly 51,000 employees. The three main business areas of BOEHRINGER INGELHEIM are: human pharmaceuticals, animal health and biopharmaceuticals. In 2019, BOEHRINGER INGELHEIM achieved net sales of 19 billion euros.”

The Disputed Domain Name was created on February 24, 2021, resolves to an inactive website, and has been used in

connection with what Complainant describes as a phishing scheme (as evidenced by an email sent from an address using the Disputed Domain Name apparently impersonating Complainant's CFO and referencing "an essential payment to be executed under intercompany remittances").

Paragraph 4(a)(i): Complainant states, inter alia, that the Disputed Domain Name is confusingly similar to the BOEHRINGER-INGELHEIM Trademark because it contains a misspelling of the BOEHRINGER-INGELHEIM Trademark, adding an additional letter "L" and substituting a letter "L" for a letter "I," which is "a clear case of "typosquatting" and "does not change the overall impression of the designation as being connected to the trademark BOEHRINGER-INGELHEIM."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in the Disputed Domain Name because, inter alia, "Respondent is not known as the disputed domain name, but as 'Tywan Lawson'; "Complainant does not carry out any activity for, nor has any business with the Respondent"; "[n]either 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"; and "Respondent uses the disputed domain name to pass itself off as one of the Complainant's executive, in order to receive undue payment."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, "[g]iven 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"; "Respondent has used the domain name in a phishing scheme, attempting to pass off as one of the Complainant's executive"; and "it is well-established that using a domain name for purposes of phishing or other fraudulent activity constitutes solid evidence of bad faith use."

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

Identical or Confusingly Similar, paragraph 4(a)(i):

Based upon the trademark registration cited by Complainant, it is apparent that Complainant has rights in and to the BOEHRINGER-INGELHEIM Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the BOEHRINGER-INGELHEIM Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "boehrlnger-

ingellheim”) because “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.” WIPO Overview of WIPO Overview 3.0 (“WIPO Overview 3.0”), section 1.11.1.

Here, the Disputed Domain Name contains the BOEHRINGER-INGELHEIM Trademark in its entirety, adding an additional letter “L” and substituting a letter “L” for a letter “I.” As set forth in section 1.9 of WIPO Overview 3.0: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark.... Examples of such typos include... substitution of similar-appearing characters” and “the addition or interspersions of other terms or numbers.”

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

Rights or Legitimate Interests, paragraph 4(a)(ii):

Complainant states, inter alia, that “Respondent is not known as the disputed domain name, but as ‘Tywan Lawson’”; “Complainant does not carry out any activity for, nor has any business with the Respondent”; “[n]either 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”; and “Respondent uses the disputed domain name to pass itself off as one of the Complainant’s executive, in order to receive undue payment.”

WIPO Overview 3.0, section 2.1, states: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the Policy.

Registered and Used in Bad Faith, Paragraph 4(a)(iii):

Whether a domain name is registered and used in bad faith for purposes of the Policy may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the Policy: (i) circumstances indicating that the registrant has registered or the registrant has 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 complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant 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 registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s 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 registrant’s website or location or of a product or service on the registrant’s website or location.

WIPO Overview 3.0, section 3.1.4, states that “phishing... is manifestly considered evidence of bad faith.”

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHLINGER-INGELLHEIM.COM**: Transferred
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PANELLISTS

Name	Douglas M. Isenberg
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DATE OF PANEL DECISION **2021-04-06**

Publish the Decision
