

Decision for dispute CAC-UDRP-103645

Case number	CAC-UDRP-103645
Time of filing	2021-03-10 09:33:58
Domain names	boehringer-infelheim.com, boehringer-ingelheim.com

Case administrator

Organization	Denisa Bilík (CAC) (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 names.

IDENTIFICATION OF RIGHTS

The Complainant bases its Complaint on the International trademark registrations "BOEHRINGER-INGELHEIM", no. 221544, registered since 02.07.1959, for goods in classes 01, 02, 03, 04, 05, 06, 16, 17, 19, 29, 30, 32, designating several countries for protection and the international trademark "BOEHRINGER INGELHEIM", no. 568844 registered since 22.03.1991, for goods in classes 01, 02, 03, 04, 05, 09, 10, 16, 30, 31, designating several countries for protection.

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 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, BOEHRINGER INGELHEIM achieved net sales of 19 billion euros.

The Complainant owns a portfolio of trademarks including the International trademark registrations “BOEHRINGER-INGELHEIM”, no. 221544, registered since 02.07.1959, for goods in classes 01, 02, 03, 04, 05, 06, 16, 17, 19, 29, 30, 32, designating several countries for protection and the international trademark “BOEHRINGER INGELHEIM”, no. 568844 registered since 22.03.1991, for goods in classes 01, 02, 03, 04, 05, 09, 10, 16, 30, 31, designating several countries for protection.

Furthermore, the Complainant is the owner of a numerous portfolio of domain names including the domain name <boehringer-ingelheim.com> registered since 01.09.1995.

The disputed domain name <boehringer-infelheim.com> and < boehrunger-ingelheim.com> has been registered on 05.03.2021 and redirects to a parking page with commercial links.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant's contentions are the following:

The disputed domain names <boehringer-infelheim.com> and <boehrunger-ingelheim.com> are confusingly similar to the Complainant's earlier trademarks BOEHRINGER-INGELHEIM.

The Complainant sustains that the misspelling of the trademark BOEHRINGER-INGELHEIM (i.e. the substitution of the letters “G” and “F” or “I” and “U”) and the use of the gTLD “.COM” are not sufficient to escape the finding that the disputed domain names are confusingly similar to the Complainant's trademark and it does not change the overall impression of the designations as being connected to the trademark BOEHRINGER-INGELHEIM.

The Complainant contends that, this is a clear case of “typosquatting”, i.e. the disputed domain names contain an obvious misspelling of the Complainant's trademark: BOEHRINGER-INFELHEIM and BOEHRUNGER-INGELHEIM instead of BOEHRINGER-INGELHEIM. Further, the Complainant contends that, previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusing similar to the complainant's trademark (CAC Case No. 102708, Boehringer Ingelheim Pharma GmbH & Co.KG v. stave co ltd <boehringer-ingelheim.com>). It is the common view among UDRP panelists 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, see Edmunds.com, Inc. v. Digi Real Estate Foundation, WIPO Case No.D2006-1043, <edmundss.com>. “The disputed domain name is such a typosquatting domain and is accordingly confusingly similar to the trademark of the Complainant.”.

Moreover, the Complainant contends that, past Panels commonly stated that the gTLD is not relevant in the appreciation of confusing similarity (WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”))

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons.

First, the Complainant asserts that the Respondent is not known as the disputed domain names. 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.

Further, the Complainant asserts that the Respondent is not affiliated with nor authorized by the Complainant in any way.

The Complainant does not carry out any activity for, nor has any business with the Respondent. The Respondent is not a Complainant's licensee, nor has ever been authorised to make use of the Complainant's trademark or to apply for the registration of the disputed domain names.

Lastly, the Complainant points out that the disputed domain names redirect to a parking page with commercial links, which is further evidence of the Respondent's lack of rights or legitimate interests.

The Complainant further argues that the disputed domain names have been registered, and are being used in bad faith.

The Complainant's maintains that its BOEHRINGER-INGELHEIM trademark is very distinctive, having a widespread and longstanding use and reputation in the relevant field, that the Respondent choose to register the domain names to create a confusion with the Complainants trademark, that the Respondent has registered and used the disputed domain names with full knowledge of the Complainant's trademark.

The Complainant's further sustains that, by registering the domain names with the misspelling of the trademark BOEHRINGER-INGELHEIM, the Complainant intentionally designed for the registered domain names to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith.

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

On these bases, the Complainant sustains that the Respondent has registered and is using the disputed domain names in bad faith.

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

I. Confusing Similarity

The Panel agrees that the disputed domain names <boehringer-infelheim.com> and <boehringer-ingelheim.com> are confusingly similar to the Complainant's earlier trademarks BOEHRINGER-INGELHEIM. The misspelling of the trademark BOEHRINGER-INGELHEIM of the Complainant, namely the substitution of the letters "G" and "F" or "I" and "U" are not sufficient to escape the finding that the domain names are confusingly similar to the Complainant's trademark and it does not change the overall impression of the designations as being connected to the trademark BOEHRINGER-INGELHEIM.

Moreover, the extension “.com” is not to be taken into consideration when examining the similarity between the Complainant’s trademark and the disputed domain name (WIPO Case No. D2005-0016, *Accor v. Noldc Inc.*). The mere adjunction of a gTLD such as “.com” is irrelevant as it is well established that the generic Top-Level Domain is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, *L’Oréal v Tina Smith*, WIPO Case No. D2008-0820 *Titoni AG v Runxin Wang* and WIPO Case No. D2009-0877, *Alstom v. Itete Peru S.A.*).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

II. Lack of Respondent's rights or legitimate interests

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 burden of proof shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain names. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant has never authorised the Respondent to make use of its trademark, nor of a confusingly similar trademark in the disputed domain names.

The disputed domains resolve to redirects to a parking page with commercial links. Such use does not amount to a bona fide offering of goods or services, or to a legitimate non-commercial or fair use of the disputed domain names, as other UDRP panels have found.

The Panel notes that the Respondent had an opportunity to comment on the Complaint’s allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

III. Bad Faith

The Complainant's trademark BOEHRINGER-INGELHEIM trademark is distinctive trademark. The Respondent has chosen to register the domain names containing misspelling versions of the Complainant’s BOEHRINGER-INGELHEIM trademark in order to create a confusion with such trademark. Therefore, the Panel concludes that at the time of registration of the disputed domain names, the Respondent was well aware of the Complainant’s trademark and has intentionally registered one in order to benefit from the reputation of the Complainant’s trademark.

In the present case, the following factors should be considered:

- (i) the Complainant's trademark is a distinctive one;
- (ii) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain names;
- (iii) the Respondent registered the disputed domain names containing misspelling versions of a distinctive trademark;
- (iv) the Respondent has no business relationship with the Complainant, nor was ever authorised to use a domain names similar to the Complainant's trademark;

(v) the disputed domain names redirect to a parking page with commercial links in order to attract Internet users for commercial gain to his own website thanks to the Complainant’s trademarks for its own commercial gain, which is an evidence of bad faith.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain names in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **BOEHRINGER-INFELHEIM.COM**: Transferred
- 2. **BOEHRUNGER-INGELHEIM.COM**: Transferred

PANELLISTS

Name	Delia-Mihaela Belciu
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DATE OF PANEL DECISION 2021-04-14

Publish the Decision