Decision for dispute CAC-UDRP-103596

Case number	**CAC-UDRP-103596**
Time of filing	**2021-02-22 09:09:23**
Domain names	**boehringeringelheimpetrebatres.com, boehringeringelheimpretrebates.com**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (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 is the registrant of the trademarks:
- BOEHRINGER-INGELHEIM (word), International (WIPO) Trademark, registration date July 2, 1959, trademark no. 221544, registered for goods in classes 1, 2, 3, 4, 5, 6, 16, 17, 29, 29, 30 and 32; and
- BOEHRINGER-INGELHEIM (stylised letters), International (WIPO) Trademark, registration date March 22, 1991, trademark no. 568844, registered for goods in classes 1, 2, 3, 4, 5, 6, 16, 17, 29, 29, 30 and 32.

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. The Complainant has become a global research-driven pharmaceutical enterprise with about 51,000 employees. Its three business areas are human pharmaceuticals, animal health and biopharmaceuticals. In 2019, net sales of the Complainant's group amounted to about EUR 19 billion.
The Complainant has rights in the internationally registered BOEHRINGER-INGELHEIM and BOEHRINGER INGELHEIM marks and they are famous.

On August 14, 2019, the Complainant registered the domain name <boehringeringelheimpetrebates.com>, which it uses for one of its websites.

On August 5, 2020, the present Respondent was found to have registered on June 12, 2020 and used in bad faith the confusingly similar domain name <boehringeringelheimpetrreebates.com>. See CAC Case No. 103124, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico.

On February 16, 2021 the Respondent registered the disputed domain names <boehringeringelheimpetrebatres.com> and <boehringeringelheimpretrebates.com>. They resolve to a parking page with commercial links.

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 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

The Complainant has shown that it has rights in the BOEHRINGER-INGELHEIM and BOEHRINGER INGELHEIM marks. The Respondent's <boeringeringelheimpetrebatres.com> and <boeringeringelheimpretrebates.com> domain names are confusingly similar to Complainant's BOEHRINGER-INGELHEIM and BOEHRINGER INGELHEIM marks because they both add a misspelling of the generic words "pet rebates" to the marks, in one instance omitting the hyphen from the mark. These differences are insufficient to distinguish the domain names from the marks. The inconsequential generic top-level domain ".com" may be ignored.

Paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the respondent, shall demonstrate rights to or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the respondent of the dispute, the use by the respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The <boeringeringelheimpetrebatres.com> and <boeringeringelheimpretrebates.com> domain names were both registered by the Respondent on February 16, 2021. They resolve to parked pages displaying commercial links. On August 5, 2020, the Respondent was found to have registered and used in bad faith the confusingly similar domain name <boehringeringelheimpetrreebates.com>. See CAC Case No. 103124, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico.

These circumstances constitute a prima facie case that the Respondent lacks rights and legitimate interests in the

<boeringeringelheimpetrebatres.com> and <boeringeringelheimpretrebates.com> domain names under Policy 4(a)(ii). Accordingly, the burden shifts to the Respondent to show it does have rights or legitimate interests. See Neal & Massey Holdings Limited v. Gregory Ricks, FA 1549327 (FORUM Apr. 12, 2014). The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the <boeringeringelheimpetrebatres.com> and <boeringeringelheimpretrebates.com> domain names under Policy 4(a)(ii).

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of a domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, including:
(iv) by using the domain name, the respondent has intentionally attempted to attract, 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 its website or location.
In light of the circumstances described above and in light of the decision rendered against the same Respondent in August, 2020 in CAC Case No. 103124, the Panel finds that the Respondent was well aware of the Complainant's BOEHRINGER-INGELHEIM and BOEHRINGER INGELHEIM marks and its <boehringeringelheimpetrebates.com> domain name when registering the <boeringeringelheimpetrebatres.com> and <boeringeringelheimpretrebates.com> domain names and did so intentionally to divert Internet users seeking the Complainant's website at www.boehringeringelheimpetrebates.com in order to attract them, for commercial gain, to the websites to which the disputed domain names resolve, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation or endorsement of those websites. The Panel therefore finds that the Respondent registered and is using the <boeringeringelheimpetrebatres.com> and <boeringeringelheimpretrebates.com> domain names in bad faith under Policy paragraph 4(b)(iv).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINGELHEIMPETREBATRES.COM**: Transferred
2. **BOEHRINGERINGELHEIMPRETREBATES.COM**: Transferred

PANELLISTS

Name	**Mr. Alan Lawrence Limbury**
DATE OF PANEL DECISION	2021-04-18

Publish the Decision