Decision for dispute CAC-UDRP-103697

Case number	**CAC-UDRP-103697**
Time of filing	**2021-03-29 11:24:00**
Domain names	**boehringeringelheimpterrebates.com, boehringeringelheipmetrebates.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 registered owner of international word trademark “Boehringer-Ingelheim.”, reg. no. 221544, registered on 2 July 1959 for goods and services in classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30 and 32 and international word trademark “Boehringer-Ingelheim.”, reg. no. 568844, registered on 22 March 1991 for goods and services in classes 1, 2, 3, 4, 5, 9, 10, 16, 30 and 31 ("Complainant's Trademarks").

The disputed domain names were registered on 22 March 2021.

FACTUAL BACKGROUND

As the Respondent did not file any response to the complaint, the Panel took into account the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) 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;

(b) the Complainant is the owner of the Complainant's Trademarks;

(c) the Complainant owns multiple domain names consisting in the wording "Boehringer Ingelheim", such as <boehringeringelheimpetrebates.com> registered and used since 14 August 2019;

(d) Respondent is using the disputed domain names in connection with a website which points to a parking webpage with commercial links.

The Complainant seeks transfer of the disputed domain names to the Complainant.

PARTIES CONTENTIONS

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) disputed domain names are confusingly similar to the Complainant's Trademarks as the addition of the terms "PET REBATES" or "PTE RREBATES" is not sufficient to escape the such confusing similarity;

(ii) disputed domain names are also a case of "typosquatting", i.e. the disputed domain names contain an obvious misspelling of the domain name the <boehringeringelheimpetrebates.com> used by the Complainant to offer rebates on pet health products;

(iii) the Respondent is not affiliated with the Complainant nor authorized by it in any way to use Complainant's Trademarks. The Complainant does not carry out any activity for, nor has any business with the Respondent;

(iv) the disputed domain names display a parking page. It demonstrates a lack of legitimate interests of the Respondent in respect of the disputed domain names;

(v) given the distinctiveness of the Complainant's Trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the domain names with full knowledge of the Complainant's trademark. Registering the disputed domain names which include the Complainant's Trademarks with addition of misspelled terms was an intentional attempt to create confusing similarity with the Complainant's Trademarks and the domain name already used by the Complainant and thus the registration was done in bad faith; and

(vi) the Respondent, Fundacion Comercio Electronico, was involved in numerous similar typosquatting cases before the CAC introduced by the Complainant. Please see for instance CAC Cases No. 103516, 103498, 103453, 103455, 103404, 103270, 103181, 103124, 103132, 103065.

THE RESPONDENT:

The Respondent did not provide any response to the complaint.

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 Uniform Domain

Name Dispute Resolution Policy ("UDRP" or "Policy")).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements to obtain an order that the disputed domain name shall be transferred or revoked:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in this proceeding.

RIGHTS

The disputed domain names are confusingly similar with the Complainant’s Trademarks. An addition of a misspelled generic term "pet rebates" cannot prevent the association between the disputed domain names and Complainant's Trademarks (and the domain name <boehringeringelheimpetrebates.com> used by the Complainant) in the eyes of an average internet user.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO 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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the disputed domain names. Neither is the Respondent in any way related to the Complainant. The Respondent failed to provide any information and evidence that it has relevant rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a) (ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Panel believes that this case is an example of typosquatting which is one of the model situations of bad faith registration / use of a domain name (paragraph 4(b)(iv) of the Policy). Moreover, given the reputation of the Complainant and distinctiveness of Complainant's Trademarks the Panel cannot find any conceivable good faith registration and use of the disputed domain names by the Respondent in a situation where there is no legitimate website under the disputed domain name and there was no response to the complaint in which the Respondent could have established such good faith use of the disputed domain name (or at least preparations for such good faith use). Also the Panel took into account that the Respondent has already been involved in similar cases of typosquatting.

As a result, the Panel found that the disputed domain names have been registered and used by the Respondent in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

In all of the above, the Panel generally concurs with the decision in the similar case involving the Complainant and the Respondent, please see CAC Case No. 103124, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico <boehringeringelheimpetrreebates.com>.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERINGELHEIMPTERREBATES.COM**: Transferred
2. **BOEHRINGERINGELHEIPMETREBATES.COM**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2021-05-08

Publish the Decision