Decision for dispute CAC-UDRP-103741

Case number	CAC-UDRP-103741
Time of filing	2021-04-19 09:39:00
Domain names	boehringerngelhempetrebates.com, boehringerringelheinpetrebates.com

Case administrator

Organization	Denisa Bilík (CAC) (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 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 52,000 employees. The three business areas of BOEHRINGER INGELHEIM are human pharmaceuticals, animal health and biopharmaceuticals. In 2020, net sales of the BOEHRINGER INGELHEIM group amounted to about EUR 19.6 billion.

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 2 July 1959; and
- the international trademark BOEHRINGER INGELHEIM® n°568844 registered since 22 March1991.

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

The disputed domain names <boehringerngelhempetrebates.com> and <boehringerringelheinpetrebates.com> were registered on 12 April 2021 and resolve to a parking page with commercial links.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

i) The Complainant states that the disputed domain names are confusingly similar to its trademark. The misspellings in the trademark BOEHRINGER-INGELHEIM®, i.e. the deletion of the letter "I" twice or the addition of the letter "R" and the substitution of letter "M" by the letter "N" and the addition of the terms "PET REBATES" is not sufficient to escape the finding that the domain names are confusingly similar to the trademark BOEHRINGER-INGELHEIM®. It does not change the overall impression of the likelihood of confusion between the disputed domain names and the Complainant, its trademark 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.boehringeringelheimpetrebates.com/. The addition of the generic Top-Level Domain suffix ".COM" does not change the overall impression as to being connected to the trademark BOEHRINGER-INGELHEIM®.

The Complainant recalled:
- WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.;
- CAC Case No. 103574, Boehringer Ingelheim Pharma GmbH & Co.KG v. Fundacion Comercio Electronico.

ii) The Complainant states that the Respondent does not have any rights or legitimate interest in the disputed domain names, because of domain parking while the Respondent is not affiliated with nor authorized by the Complainant in any way. The Respondent has no rights or legitimate interests in respect of the disputed domain names. 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 names by the Complainant. Furthermore, the disputed domain names resolve to a parking page with commercial links. The Respondent is not identified in the Whois database as the disputed domain names. Therefore, it is not commonly known by a disputed domain name if the WHOIS information is not similar to the disputed domain name.

The Complainant recalled:
- WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.;
- Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>;
- Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe.

iii) The Complainant states that the disputed domain names have been registered and are being used in bad faith while it is one of the world's 20 leading pharmaceutical companies, with roughly 52,000 employees worldwide and 19.6 billion euros in net sales and its trademark BOEHRINGER-INGELHEIM® is distinctive and well-known which leads to the notoriety of the Complainant's trademarks.

The Complainant recalled:
- WIPO Case No. D2019-0208, Boehringer Ingelheim Pharma GmbH & Co. KG v. Marius Graur;
- CAC Case No. 102274, BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG v. Karen Liles.

Furthermore, the Respondent choose to register the domain names to create a confusion with the domain name <boehringeringelheimpetrebates.com>, used by the Complainant to offer rebates on pet health products. Consequently, 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. Given that the disputed domain names resolve to a parking page with commercial links it is obvious 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.

The Complainant recalled:
- WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

The Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed allegations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules because of the Respondent's failure to submit a response.

Therefore, in the absence of a response, it is appropriate to accept as true all allegations of the Complainant.

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 name 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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs the Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

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

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

The Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules because of the Respondent's failure to submit a response. Therefore, in the absence of a response, it is appropriate to accept as true all allegations of the Complainant.

The Panel finds that the Complainant has rights in the trademark BOEHRINGER-INGELHEIM n°221544 and the trademark BOEHRINGER INGELHEIM n°568844 registered with the WIPO. Registration of a trademark with the WIPO sufficiently

establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the trademarks 'BOEHRINGER-INGELHEIM' which are distinctive and well-known international trademarks. The notoriety and the actually distinctive nature of the trademarks BOEHRINGER-INGELHEIM is confirmed by their widespread and longstanding use and reputation in the field of the Complainant´s business areas i.e. human pharmaceuticals, animal health and biopharmaceuticals since many decades.

(i) The disputed domain name is confusingly similar to trademarks in which Complainant has rights

The Panel finds that the disputed domain names are confusingly similar to the Complainant´s trademarks BOEHRINGER-INGELHEIM on the grounds that the addition of the letters “K” and “H” and "R" or the omission of the letters "L" and "E" in the second part "INGELHEIM" of the trade mark is not sufficient to escape the finding that the disputed domain name <boehirnger-ingelheim.com> is confusingly similar to the Complainant’s trademarks. The changes in the term does not change the overall impression of the designation as being connected to the trademarks BOEHRINGER-INGELHEIM because the disputed domain names constitute of misspelled words of the Complainant’s registered trademarks BOEHRINGER-INGELHEIM. The substitution, deletion or addition of letters or even a word in the disputed domain names consisting of misspellings of trademark is not sufficient to avoid the likelihood of confusion with the Complainant and not diminish the confusingly similar nature between the trademarks and the disputed domain names. That is a clear case of "typosquatting“ when the disputed domain names contain an obvious misspelling of the Complainant’s trademark. In accordance with CAC case no. 102922 Boehringer Ingelheim Pharma GmbH & Co.KG v. Super Privacy Service LTD c/o Dynadot the Panel finds that since the words "pet rebates" are associated in the public mind with the Complainant, none of the differences in any of the disputed domain names is sufficient to dispel a finding of confusing similarity between the disputed domain names and the Complainant´s trademarks.

Thus, the Complainant has, to the satisfaction of the Panel, shown the disputed domain names are confusingly similar to the trademarks in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

(ii) The Respondent has no rights or legitimate interests in respect of the disputed domain names

The Panel finds in accordance with a widely accepted conclusion by the UDRP Panels that 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, a Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have no rights or legitimate interests in respect of the disputed domain names. The Respondent remains silent as to the evidence of the contrary.

The Panel finds that the Respondent is not identified in the Whois database as the disputed domain names and it is not commonly known by the disputed domain names because the WHOIS information was not similar to the disputed domain names. The name of the Respondent "Fundacion Comercio Electronico" clearly shows the absence of a prima facie link between its name and the trademarks of the Complainant. It is obvious that the Respondent is not affiliated with nor authorized by the Complainant in any way and it has no rights or legitimate interests in respect of the disputed domain names. 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 trademark BOEHRINGER-INGELHEIM, or apply for registration of the disputed domain names by the Complainant. Furthermore, the disputed domain names redirect to a parking page with commercial links.

Thus, 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).

(iii) The domain name has been registered and is being used in bad faith

The Complainant is one of the world’s 20 leading pharmaceutical companies. The trademarks BOEHRINGER-INGELHEIM are well-known. The Panel finds that the notoriety of the Complainant’s trademarks is done because of their very distinctive nature and the widespread and longstanding use and reputation in the relevant field. Thus, it is inconceivable that the

Respondent registered the disputed domain name without being aware of the Complainant’s legal rights. The Panel infers that the Respondent had the Complainant's trademarks BOEHRINGER-INGELHEIM in mind when registering the disputed domain name so that it chose to register the disputed domain names to create a confusion with the domain name <boehringeringelheimpetrebates.com>, used by the Complainant to offer rebates on pet health products.

The Panel finds that the disputed domain names resolve to a parking page with commercial links that leads the Panel to the conclusion that the Respondent has attempted to attract Internet users for commercial gain to his own websites thanks to the Complainant’s trademarks by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves, which is an evidence of bad faith.

Thus, 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 ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGERNGELHEMPETREBATES.COM**: Transferred
2. **BOEHRINGERRINGELHEINPETREBATES.COM**: Transferred

PANELLISTS

Name	**JUDr. Vojtěch Trapl**

DATE OF PANEL DECISION 2021-05-12

Publish the Decision