

Decision for dispute CAC-UDRP-103825

Case number	CAC-UDRP-103825
Time of filing	2021-05-25 09:30:30
Domain names	boehringeringelhemimpetrebstes.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	Whois Privacy Corp.
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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 name.

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the registered owner of the following trademarks:

- International trademark registration n. 221544 “Boehringer-Ingelheim.” (word trademark), registered on July 2, 1959, and duly renewed, valid for classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30, and 32 and valid in various countries; and
- International trademark registration n. 568844 “Boehringer Ingelheim” (word trademark), registered on March 22, 1991, and duly renewed, valid for classes 1, 2, 3, 4, 5, 9, 10, 16, 30, and 31 and valid in various countries.

FACTUAL BACKGROUND

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

The Complainant (“Boehringer Ingelheim”) is a well-known research-driven German pharmaceutical group, which is active in various countries all over the world. The Complainant asserts that it currently has about 52.000 employees worldwide, and has amassed net sales amounting to 19.6 billion euros in 2020. The three business areas of Boehringer Ingelheim are human pharmaceuticals, animal health and biopharmaceuticals.

The Complainant has submitted evidence that it is the registered owner of the trademarks mentioned above under "Identification of rights".

The Complainant asserts that it owns the following domain name consisting of the trademark "Boehringer Ingelheim": <www.boehringerengelheimpetrebates.com>. However, from the evidence submitted by the Complainant, it seems that a different company, 'Boehringer Ingelheim Vetmedica GmbH', is the registered owner of this domain name, not the Complainant.

The disputed domain name was registered on May 17, 2021.

The Complainant has demonstrated that, at the time of filing its complaint, the disputed domain name refers to a parked webpage consisting of third-party 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 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

1. Identical or confusingly similar

The disputed domain name <boehringerengelheimpetrebates.com> consists of the terms "boehringer ingelhemim", "pet", and "rebates". The term "boehringer ingelhemim" of the disputed domain name is confusingly similar to the Complainant's registered trademark(s) "Boehringer Ingelheim". Both terms contain the word "Boehringer", and the disputed domain name contains of a misspelling of the word "Ingelheim", as it adds the letter 'M'.

Moreover, the Panel finds that the term "Pet" of the disputed domain name can be seen as referring to one of the Complainant's core businesses, i.e. animal health products and services. Indeed, the 'Boehringer Ingelheim' trademarks of the Complainant are registered for, amongst others, the following goods and services: "products for the care of animals and plants"; "Animal foodstuffs"; "Pharmaceutical, veterinary and hygienic products"; "veterinary apparatus and instruments".

Lastly, the Panel finds that the term "rebates" of the disputed domain name seems to be a misspelling of the word "rebate(s)". A "rebate" is a commercial term meaning a discount or a reduced fare, which can be seen as complementary to the Complainant's activities.

There is also the addition of the '.com' suffix, which may be disregarded when it comes to considering whether a domain name is

confusingly similar to a trademark in which the Complainant has rights.

The Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found 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, the burden of production 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, the complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the complainant.

The Panel notes that the Complainant contends that the Respondent is not identified in the Whois database as the disputed domain name; that the Respondent is not affiliated with nor authorised by the Complainant in any way; that the Complainant does not carry out any activity for, nor has any business with the Respondent; and that no license or authorization has been granted to the Respondent to make any use of the Complainant's trademarks "Boehringer Ingelheim", or to apply for registration of the disputed domain name by the Complainant.

The Complainant further argues that, the fact that the disputed domain name resolves to a parked webpage consisting of third-party commercial links, is an indication that the Respondent is not using the domain name for the bona fide offering of goods or services, or for legitimate non-commercial or fair use.

The Respondent did not file an administratively compliant (or any) response. In such circumstances, the Panel finds from the facts put forward that:

The Respondent does not appear to have any rights or legitimate interests associated with the "Boehringer Ingelheim" trademark(s), nor with variations thereof such as "boehringeringelhemimpetrebstes".

There is no evidence that the Respondent is commonly known by the "Boehringer Ingelheim" trademark(s), or with variations such as "boehringeringelhemimpetrebstes". The Respondent does not seem to have any consent by the Complainant to use these trademarks or variations such as "boehringeringelhemimpetrebstes". The disputed domain name does not correspond to the name of the Respondent.

There is no evidence that the Respondent has used the disputed domain name for any bona fide offering of goods or services of its own. Also, there is no evidence showing any demonstrable preparations to use the domain name or a name corresponding to the disputed domain name in connection with such bona fide offering of goods or services.

There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademarks at issue.

On the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith registration and use

The Complainant asserts that its trademark(s) "Boehringer Ingelheim" are distinctive and well-known, and that previous panels (including a panel of the CAC) have confirmed this.

The Complainant contends that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark(s), and that the disputed domain name would not have been registered if it were not for the Complainant's trademark(s). The Complainant further contends that the fact that the Respondent registered a domain name that is confusingly similar to these distinctive and well-known trademarks indicates that the Respondent had knowledge of the Complainant's trademarks at the time of registration and use of the disputed domain name.

The Complainant contends that the disputed domain name is not used for any bona fide offering of goods and/or services, and that it is likely that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant.

Lastly, the Complainant contends that the Respondent chose to register the disputed domain name to create confusion with the domain name <boehringerengelheimpetrebates.com>, used by the Complainant to offer rebates (i.e. discounts, reduced fares) on pet health products.

The Respondent did not dispute these claims.

The Panel finds that, on the balance of probabilities, it may be expected that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's "Boehringer Ingelheim" trademark(s) and the scope of these trademark(s). The terms selected by the Respondent ("boehringer ingelhemim", "pet", and "rebstes") seem only selected for their similarity to the Complainant's registered "Boehringer Ingelheim" trademark(s), and the commercial activities of the Complainant.

The disputed domain name consists of the terms "boehringer ingelhemim", which strongly resemble the Complainant's registered trademark(s), with the addition of the terms "pet" and "rebstes". The terms "boehringer ingelhemim" do not seem to have an independent meaning in any language and seem chosen only for their resemblance to the Complainant and its registered trademarks. The term "pet" refers to one of the Complainant's core businesses, i.e. pharmaceutical products and services regarding animal health. Indeed, the "Boehringer Ingelheim" trademarks of the Complainant are registered for, amongst others, the following goods and services: "products for the care of animals and plants"; "Animal foodstuffs"; "Pharmaceutical, veterinary and hygienic products"; "veterinary apparatus and instruments". The term "rebsts" is likely a typo of the word "rebate(s)". complementary to the Complainant's activities.

The fact that the disputed domain name is confusingly similar to the Complainant's trademark(s) with the addition of the word "pet" makes it even more unlikely that the Respondent would have chosen the term "boehringerengelhemimpetrebstes" independently from and without prior knowledge of the (registered trademarks of the) Complainant.

The latter is reinforced by the fact that the Complainant contends that it is the owner of the domain name <boehringerengelheimpetrebates.com>, which is similar to the disputed domain name. Although it seems that a different company, 'Boehringer Ingelheim Vetmedica GmbH', is the owner of this domain name, and not the Complainant, the Panel reasonably assumes that this domain name is at least related to a group company of the Complainant. The Panel notes that the website available via this domain name mentions the Complainant's registered trademark(s) "Boehringer Ingelheim" several times.

In light of this, it seems unlikely that the Respondent would not have been aware of the unlawful character of the disputed domain name at the time of its registration and use.

In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the facts in this case that the Respondent had the "Boehringer Ingelheim" trademark(s) of the Complainant in mind when registering and subsequently using the disputed domain name.

For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is 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. **BOEHRINGERINGELHEMIMPETREBSTES.COM**: Transferred

PANELLISTS

Name	Bart Van Besien
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DATE OF PANEL DECISION	2021-06-26
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Publish the Decision	
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