

Decision for dispute CAC-UDRP-103998

Case number	CAC-UDRP-103998
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Time of filing	2021-09-01 09:17:35
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Domain names	boehringer.cloud
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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 S.A.S.
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Respondent

Organization	seedreams
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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 is the owner of the International trademark BOEHRINGER with registration No. 799761, registered on 2 December 2002 for goods in International Classes 1, 3, 5, 10, 16, 30, 31, 35, 41, 42 and 44 (the "BOEHRINGER trademark").

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 140 affiliated companies worldwide and about 46,000 employees. Its two business areas are human pharmaceuticals and animal health. In 2013, the net sales of the BOEHRINGER INGELHEIM group amounted to about EUR 14.1 billion.

The Complainant is also the owner of the domain name <boehringer.com> registered on 12 January 2000.

The disputed domain name was registered on 21 August 2021 and is inactive.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant states that the disputed domain name is confusingly similar to its BOEHRINGER trademark and to its domain names. The addition of letter "n" in the disputed domain name is not sufficient to avoid the likelihood of confusion with the trademark. The obvious misspelling of the BOEHRINGER trademark is characteristic of a typo-squatting practice intended to create a confusing similarity with the Complainant's BOEHRINGER trademark, and does not prevent the disputed domain name from being confusing similar to it.

The Complainant maintains that the Respondent has no rights or legitimate interest in respect of the disputed domain name, because the Respondent is not commonly known by the disputed domain name and is not affiliated with the Complainant, and the Complainant has not authorized the Respondent to use the Complainant's BOEHRINGER trademark. According to the Complainant, the fact that the disputed domain name is a typo-squatted version of the BOEHRINGER trademark is further evidence that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The disputed domain name is confusingly similar to the BOEHRINGER trademark and given the distinctiveness of this trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain name with knowledge of the trademark. The Complainant further states in this regard that a Google search on the term "BOEHRINNGER" provides several results, all of them being linked with the Complainant. According to the Complainant, since the disputed domain name is a misspelling of the BOEHRINGER trademark, it was intentionally designed to be confusingly similar with this trademark.

The Complainant further contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of it by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, an infringement of the Complainant's rights under trademark law, or an attempt to attract, for commercial gain, Internet users to the Respondent's own website, by creating a likelihood of confusion with the Complainant's BOEHRINGER trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions and did not submit any arguments or evidence in its defence.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the BOEHRINGER trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.cloud” gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence “boehrinnger”. As pointed out by the Complainant, it represents a mistyping of the BOEHRINGER trademark, and the only difference is the additional letter “n” in the disputed domain name. The BOEHRINGER trademark is easily recognized in the disputed domain name, and the additional letter does not preclude a finding of confusing similarity between the BOEHRINGER trademark and the disputed domain name.

Taking all the above into account, the Panel finds that the disputed domain name is confusingly similar to the BOEHRINGER trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it is not commonly known by it, is not associated to the Complainant and has not been authorized by the Complainant to use the BOEHRINGER trademark. According to the Complainant, the disputed domain name is a typo-squatted version of the BOEHRINGER trademark intended to confuse Internet users. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not alleged that it has rights and legitimate interests in the disputed domain name; it has not disputed the Complainant's allegations and evidence in this proceeding.

The disputed domain name is indeed confusingly similar to the Complainant's BOEHRINGER trademark, and in the absence of any plausible explanation by the Respondent why it has chosen and registered the disputed domain name, it can only be regarded as a typo-squatted version of the BOEHRINGER trademark.

The above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant and of the BOEHRINGER trademark, has registered the disputed domain name in an attempt to exploit this trademark's goodwill by confusing Internet users. In the Panel's view, such activity is not legitimate and does not give rise to rights and legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

As discussed above, the disputed domain name is confusingly similar to the BOEHRINGER trademark and represents a typo-squatted version of it. In the absence of any plausible explanation by the Respondent why it has chosen and registered the disputed domain name, the Panel accepts as more likely that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the BOEHRINGER trademark in an attempt to extract commercial gain by misleading Internet users that it is affiliated to the Complainant.

The disputed domain name has not been used. As discussed in section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), from the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

The Panel finds that most of these factors are present here. The Complainant's BOEHRINGER trademark has significant reputation, the Respondent has failed to submit a Response or to provide any evidence of actual or contemplated good-faith use of the disputed domain name, and the Panel is not aware of any good faith use to which the disputed domain name may be put by the Respondent.

This satisfies the Panel that the Complainant has established that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRNINGER.CLOUD**: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION	2021-10-12
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Publish the Decision
