

Decision for dispute CAC-UDRP-104196

Case number	CAC-UDRP-104196
Time of filing	2021-11-30 09:18:56
Domain names	boeh-ringerIngelheim.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
--------------	--

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG
--------------	---

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	--------------------------

Respondent

Name	Janet Fitz
------	-------------------

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 trademark registrations across various jurisdictions, including:

- “Boehringer-Ingelheim.” word international trademark registration No. 221544 for goods and services in Classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30, 32 with designation for AT, BX, CH, DE, EG, ES, FR, HU, IT, LI, MA, MC, ME, PT, RS, SM (under the Madrid Protocol by virtue of Art. 9sexies) and registration date on July 2nd, 1959; and
- “Boehringer Ingelheim” word international trademark registration No. 568844 for goods and services in Classes 1, 2, 3, 4, 5, 9, 10, 16, 30, 31 with designation for AG, BH, BN, BQ, CW, IS, NO, SX, SY, TM, TR, UZ (under the Madrid Protocol) AL, AM, AT, AZ, BA, BG, BT, BX, BY, CH, CN, CU, CZ, DZ, EG, ES, FR, HR, HU, IT, KE, KG, KP, KZ, LI, LR, MA, MC, MD, ME, MK, MN, MZ, PT, RO, RS, RU, SD, SI, SK, SL, SM, TJ, UA, VN (under the Madrid Protocol by virtue of Art. 9sexies) and registration date on March 22nd, 1991.

The Complainant proved its ownership of trademark registrations in question by submitted extracts from the trademark register.

FACTUAL BACKGROUND

The Complainant is a German family-owned pharmaceutical group of companies with roots going back to 1885. The Complainant is a global research-driven pharmaceutical enterprise with about 52,000 employees and 19,6 billion euros net

sales in 2020. The Complainant's main businesses are human pharmaceuticals, animal health and biopharmaceuticals. The Complainant is the owner of numerous trademarks consisting of the wording "Boehringer Ingelheim" registered in relation to several classes of goods and services, connected with the pharmaceutical industry. The Complainant presents its products via several websites and registered domain names consisting of its trademark wording, such as, <boehringer-ingelheim.com>, as shown in the excerpt from Whois database. According to the Registrar, the Respondent is Janet Fitz. The Respondent's provided address as being at Norwood, Massachusetts, in the United States of America. The Respondent registered the disputed domain name <boeh-ringerIngelheim.com> on November 23, 2021. The disputed domain name was redirecting to a parking page with commercial link. This was evidenced by the submitted copy of the parking website.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

A. The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademarks.

The Complainant argues that the disputed domain name is confusingly similar to the Complainant's trademarks and its domain names associated.

In the view of the Complainant, there is characteristic typosquatting practice in the obvious misspelling of the Complainant's trademark, i.e., the substitution of the letter "I" by the letter "L" and the move of the hyphen. According to the Complainant, there is an intention to create confusing similarity between the Complainant's trademark and the disputed domain name.

In this respect, the Complainant points out CAC case No. 102708 in which previous Panel has found that the slight spelling variations does not prevent a domain name from being confusingly similar to the Complainant's trademark and does not prevent a disputed domain name from being confusingly similar to the complainant's trademark.

The Complainant added that past Panels commonly stated that the gTLD is not relevant in the appreciation of confusing similarity (i.e. WIPO Case No. D2006-0451).

B. The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant contends that the Respondent is not known under the disputed domain name. According to the Complainant, past panels have held that the Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name (i.e. Forum Case No. FA 1781783).

The Complainant states that it is not related in any way with the Respondent and the Respondent does not carry out any activity for, nor has any business with the Complainant. Moreover, neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark or apply for registration of the disputed domain name by the Complainant.

The Complainant claims that the disputed domain name is a typosquatted version of the Complainant's trademark. The Complainant contends that typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name (i.e. Forum Case No. 1765498, Forum Case No. 1597465). Furthermore, the disputed domain name resolves to a parking page with commercial links. As the Complainant added, past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use (i.e. Forum Case No. FA 970871, WIPO Case No. D2007-1695).

C. The Complainant contends that the domain name has been registered and is being used in bad faith.

The Complainant argues that given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark (i.e. WIPO Case No. D2019-0208, CAC Case No. 102274).

The Complainant alleges that by registering the disputed domain name with the misspelling of the Complainant's trademark it was intentionally designed to be confusingly similar with the Complainant's trademark and that previous UDRP Panels have seen such actions as evidence of bad faith (i.e. WIPO Case No. D2016-1546).

Furthermore, the Complainant contends that the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith (i.e. WIPO Case No. D2018-0497).

RESPONDENT:

No administratively Complaint 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 UDRP).

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 UDRP).

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

I. CONFUSING SIMILARITY

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks consisting of "Boehringer Ingelheim" wording.

The WIPO Overview 3.0 in Paragraph 1.2.1 states: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The WIPO Overview 3.0 in Paragraph 1.7 states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The WIPO Overview 3.0 in Paragraph 1.9 states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

Using of the generic Top-Level Domain ".com" is generally disregarded in the similarity test "as it does not add anything to the distinctiveness of the disputed domain name" (see CAC case No. 102399).

The typosquatting is "the case where the disputed domain name is a slight misspelling of a registered trademark to divert internet traffic" (see WIPO Case No. D2006-1043).

The Complainant has established that owns numerous registered trademarks designated for significant amount of jurisdictions globally (proven by the submitted registration extracts). In the present case, the Complainant's trademarks such as "Boehringer-Ingelheim." is clearly recognizable in the disputed domain name <boeh-ringerIngelheim.com>.

The obvious misspelling of the Complainant's trademark consisting of the substitution of the letter "I" by the letter "l" and the move of the hyphen do not change an overall impression of the disputed domain name and the entirety of the relevant mark "Boehringer-Ingelheim." is recognizable. Moreover, the disputed domain is visually and phonetically similar to the Complainant's trademarks and its registered domain names. The Panel finds this as the case of typosquatting.

The disputed domain name <boeh-ringerIngelheim.com>, as it reproduces "Boehringer-Ingelheim." trademark in its entirety, with the addition of the misspelling and the hyphen is considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the domain name.

Pursuant to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (see CAC case No. 102430). Moreover, the Panel is of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, the Panel refers to WIPO case No. D2000-1769. Within the meaning of Paragraph 4(a)(ii) of the UDRP, once the complainant has made something credible (prima facie evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In CAC case No. 102279, the Panel stated that “[i]n the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy.”

In the present case, the Complainant asserts that the Respondent is not commonly known under the disputed domain name. In addition, the Respondent is not related in any way with the Complainant and the Complainant never granted any license nor authorization to the Respondent to use the Complainant's trademarks or apply for registration of the disputed domain. Furthermore, the Respondent used the disputed domain name for commercial purposes resolving to a parking page with commercial links as it was evidenced by the Complainant.

The Respondent did not reply to the Complaint and so failed to demonstrate its rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the UDRP.

III. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain name in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

The UDRP in Paragraph 4(b)(iv) states that it shall be evidence of the registration and use of a domain name in bad faith: “by using the domain name, you [the Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, ...”.

In WIPO Case No. D2006-1440, the Panel stated: “when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted.”

In this case, the Complainant owns numerous trademarks consisting of “Boehringer Ingelheim” wording (evidenced by the submitted trademark registration extracts). Previous Panels decided that the Complainant's marks are “highly distinctive and ha[ve] a widespread and longstanding reputation in the field of pharmaceuticals” (see WIPO Case No. D2019-0208). Moreover, the Complainant is one of the top 20 pharmaceutical companies with about 52,000 employees. In addition to that, the Complainant's amount of net sales globally is in billions euros (proven by submitted information about the Complainant's business enterprise). The Panel states that the Respondent must have been aware of the Complainant's trademarks and their reputation before the registration of the disputed domain name on November 23, 2021.

Under the disputed domain name, a parking page with commercial links is made available. On the basis of that activity, the Panel finds that the Respondent used the disputed domain name in order to confuse and attract Internet users for commercial gain. This activity was proved by the submitted evidence – copy of the website with commercial links.

Additionally, the disputed domain name is typical case of typosquatting practice which signifies the use in bad faith (see CAC Case No. 10128, WIPO Case No. D2016-1546, WIPO Case No. D2002-0568).

Following the above mentioned, the Panel finds that the Complainant has satisfied Paragraph 4(a)(iii) of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEH-RINGERLINGELHEIM.COM:** Transferred

PANELLISTS

Name	JUDr. Radim Charvát, Ph.D., LL.M.
------	--

DATE OF PANEL DECISION	2022-01-03
------------------------	------------

Publish the Decision
