

Decision for dispute CAC-UDRP-104233

Case number	CAC-UDRP-104233
Time of filing	2021-12-14 09:09:04
Domain names	boehninger-Ingelheim.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 S.A.S.
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Respondent

Name	Cassie Gann
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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 owns a portfolio of trademarks including the wording "BOEHRINGER INGELHEIM" in several countries, such as the international trademark BOEHRINGER-INGELHEIM n°221544, registered since July 2, 1959 and duly renewed, and the international trademark BOEHRINGER INGELHEIM n°568844 registered since March 22, 1991.

Furthermore, the Complainant owns multiple domain names consisting in the wording "BOEHRINGER INGELHEIM", such as <boehringer-ingelheim.com> registered since September 1, 1995.

The disputed domain name <boehninger-Ingelheim.com> was registered on December 7, 2021 and redirects to a parking page with commercial links.

FACTUAL BACKGROUND

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

The Complainant is a German 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 main business areas of BOEHRINGER INGELHEIM are: human pharmaceuticals, animal health and biopharmaceuticals. In 2020, BOEHRINGER INGELHEIM achieved net sales of 19.6 billion euros.

The Complainant owns a large portfolio of trademarks including the wording "BOEHRINGER INGELHEIM" in several countries and multiple domain names consisting in the wording "BOEHRINGER INGELHEIM", such as <boehringer-ingelheim.com>.

The disputed domain name <boehninger-Ingelheim.com> was registered on December 7, 2021 and redirects to a parking page with commercial links .

The Complainant states that the disputed domain name <boehninger-Ingelheim.com> is confusingly similar to its trademark BOEHRINGER-INGELHEIM and its domain names associated.

The obvious misspelling of the Complainant's trademark, i.e. the substitution of the letters "R" and "I" by the letters "N" and "L", is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. The disputed domain name is such a very similar typosquatting domain and is in the view of Complainant confusingly similar to the Complainant's trademark.

The Respondent contends that the Respondent is not known as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <boehninger-Ingelheim.com> and he is not related in any way with the Complainant. 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 name by the Complainant.

Furthermore, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark BOEHRINGER-INGELHEIM. 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.

Furthermore, the Complainant states that the disputed domain name resolves to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

Thus, the Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain name.

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.

Therefore, by registering the domain name <boehninger-Ingelheim.com> with the misspelling of the trademark BOEHRINGER-INGELHEIM, the Complainant states that this practical was intentionally designed to be confusingly similar with the Complainant's trademark.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends 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.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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

A. The disputed domain name is confusingly similar to the protected mark.

The Complainant has rights in the mark BOEHRINGER INGELHEIM by virtue of its registered trademarks.

The Complainant clearly has trademark rights and the Complainant's trademark rights have also been confirmed by previous panels, e.g. CAC Case No. 101420 (<boehringeringelheiminc.com>); CAC Case No. 101436 (<boehringer-ingl1heim.com>) and BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546.

The Panel finds the disputed domain name is confusingly similar to the Complainant's trademarks.

As stated in BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546: "it is well-established that "[a] domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name" (quoting paragraph 1.10 of the WIPO Overview 2.0).

The disputed domain name incorporates the Complainant's very distinct and long BOEHRINGER INGELHEIM marks in its entirety. The only difference between the disputed domain name and the Complainant's BOEHRINGER INGELHEIM trademark is the substitution of the letters "R" and "I" by the letters "N" and "L", this is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name, because it is difficult to detect this different letters. The disputed domain name is such a typosquatting domain and is accordingly confusingly similar to the trademark of the Complainant.

The gTLD suffix ".com" is to be generally disregarded under the confusing similarity test.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see *Julian Barnes v. Old Barn Studios*, WIPO Case No. D2001-0121; *Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110 and CAC Case No. 101284 (<salomontw.com>).

The Complainant states that the Respondent does not have any business relationships with the Complainant.

According to the evidence provided by the Complainant the disputed domain name is not linked with an active website.

The Panel agrees that this could not constitute legitimate, non-commercial or fair use of the disputed domain name or otherwise create rights or legitimate interests under the circumstances of the case.

Previous UDRP case law supports the view of the Complainant (see e.g. *Express Scripts, Inc. v. Windgather Investments Ltd. / Mr. Cartwright*, WIPO Case No. D2007-0267 and FA 918556, *National Arbitration Forum, Disney Enters., Inc. v. Kamble*) and the Panel finds that the Complainant has provided sufficient prima facie evidence of the Respondent's lack of rights or legitimate interests in the disputed domain name.

The Respondent failed to respond.

The Panel, therefore, finds that the Complainant has shown a prima facie case that has not been rebutted by the Respondent and, therefore, satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

The Panel finds that the evidence submitted by the Complainant supports a finding of bad faith under paragraph 4(b)(iv) of the Policy, because the registration of the disputed domain name which contains obvious misspelling of the Complainant's trademark and which is virtually identical to the Complainant's domain name constitutes registration and use in bad faith (see, *Go Daddy Software, Inc. v. Daniel Hadani*, WIPO Case No. D2002-0568 (where the panel found that typosquatting is virtually per se registration and use in bad faith) – see *BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes*, WIPO Case No. D2016-1546).

The Panel finds that given the distinctiveness of the Complainant's trademarks and business name, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks and with the clear intention of taking advantage of the Complainant's marks and reputation.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is also an evidence of bad faith.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. BOEHNINGER-LNGELHEIM.COM: Transferred

PANELLISTS

Name **Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION **2022-01-04**

Publish the Decision
