Decision for dispute CAC-UDRP-101199

Case number	CAC-UDRP-101199
Time of filing	2016-03-31 09:47:16
Domain names	boehringer.xyz

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Cameron David Jackson

IDENTIFICATION OF RIGHTS

The trademark portfolio of the Complainant includes e.g. the EU word trademark "BOEHRINGER" (No. 002932853) for the nice classes 1, 3, 5, 10, 16, 30, 31, 41, 42, 44 registered on 2 March 2005 (i.e. the trademark of the Complainant predates the registration of the disputed domain name).

FACTUAL BACKGROUND

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 has become a global research-driven pharmaceutical enterprise and has today about 140 affiliated companies world-wide with roughly 46,000 employees. The two main business areas of Boehringer are: Human Pharmaceuticals and Animal Health. In 2013 alone, net sales of the Boehringer group amounted to about EUR 14.1 billion. The Complainant owns a portfolio of brands including the word “BOEHRINGER” in several countries.

The Respondent registered the disputed domain name on 1 March 2016.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

As far as the Complainant's contentions are concerned, the Complainant states that Domain name in question is identical

with trademarks it owns. Furthermore, the Complainant claims the Respondent does not have any rights or legitimate interest in the domain name and that the Respondent is only using the domain for parking and passive holding.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical to the trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

The disputed domain name is comprised of word “BOEHRINGER” (i.e. the disputed domain name fully incorporates the trademark of the Complainant) and Top-Level Domain name suffix. Turning to the Top-Level Domain name suffix, traditionally under the UDRP this has been disregarded when comparing disputed domain name and trade mark (except where the suffix forms part of the trade mark) (see WIPO Case D2014-1667 Philip Morris USA Inc. v. Sakaria Mohamoud Mussafah; WIPO Case No. D2014-1675 Petroleo Brasileiro S.A - Petrobras v. Monica Mitchell). Therefore, the disputed domain name is identical to the Complainant's trademark “BOEHRINGER”.

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 Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

The Panel finds that the Complainant's mark is distinctive. The Complainant’s assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. The Respondent has made no attempt to do so. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

The disputed domain name displays a Registrar parking page (“passive holding”) since its registration. Given the notoriety of the Complainant's trademark, it seems impossible for the Respondent to use the domain name in good faith (see similar considerations on bad faith and passive holding in WIPO Case No. D2000-0003 Telstra Corporation Limited v. Nuclear Marshmallows; WIPO Case No. D2008-0028 Action S.A. v. Robert Gozdowski; WIPO Case No. D2000-0400CBS Broadcasting, Inc. v. Dennis Toeppen).

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

The Respondent which did not react to the complaint apparently registered and uses the disputed domain name which is identical with the trademark of the Complainant without legitimate rights or interests in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOEHRINGER.XYZ**: Transferred

PANELLISTS

Name	Thomas Hoeren

DATE OF PANEL DECISION 2016-04-25

Publish the Decision