Decision for dispute CAC-UDRP-101200

Case number	CAC-UDRP-101200
Time of filing	2016-03-31 09:48:48
Domain names	boehringer-ingelhein.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Ruthann Halay

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is, inter alia, proprietor of International registration IR 568844 “Boehringer Ingelheim” registered on March 22, 1991.

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. Since then Complainant has become a global research-driven pharmaceutical enterprise and has today about 140 affiliated companies world-wide with roughly 46,000 employees. In 2013 alone, net sales of the Boehringer Ingelheim group of companies amounted to about EUR 14.1 billion.

The Complainant owns several trademarks consisting in the wording BOEHRINGER INGELHEIM in several countries.

The disputed domain name has been registered on February 15, 2016. On March 7th of 2016, a cease-and-desist letter has been sent by email to the Respondent. The Respondent did not respond to the letter.

The website under the disputed domain name currently shows several links to competitors of the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant, inter alia, argues that the disputed domain name is confusingly similar to its well-known and distinctive trademarks. Complainant refers, inter alia, to WIPO Case No. D2016-0021, Boehringer Ingelheim Pharma GmbH & Co.KG v. Kate Middleton where the Panel has found that the BOEHRINGER INGELHEIM mark is distinctive and well known.

The Complainant contends that the change of the last letter of the world INGELHEIM with the letter “N” instead of the letter “M”, and the gTLD “.COM” is not sufficient to escape the finding that the disputed domain is confusingly similar to the trademarks and it does not change the overall impression of the designation as being connected to the trademarks of Complainant.The modification of the letter “N” instead of "M" in the word " INGELHEIM " is a clear case of "typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark.

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 Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that it is not related in any way with the Complainant and that 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, or apply for registration of the disputed domain name by the Complainant.Furthermore, the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services and it is not making a legitimate noncommercial or fair use of the trademark.Therefore, the Complainant contends that the Respondent has registered the disputed domain name with a view to intentionally create a likelihood of confusion, inter alia, with the Complainant's trademarks.

The disputed domain name points to commercial links in relation with the Complainant which is a clear indication of Respondent's attempt to mislead consumers by causing a false association with Complainant, which constitutes bad faith. The Complainant asserts that the Disputed Domain Name has been used by the Respondent for the purposes of intentionally attempting to attract Internet users in order to generate pay-per-click or other advertising revenue, by creating a likelihood of confusion with the Complainant’s trademark.The Complainant contends that the Respondent has intentionally registered the domain name in order to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or location or of a product or service on its website or location.Thus, the Complainant contends that the Respondent has registered the disputed domain name and is using it in bad faith.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests with respect to the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established the fact that it has valid trademark rights for “Boehringer Ingelheim”.

The disputed domain name is confusingly similar to the Boehringer Ingelheim mark of the Complainant since the modifications in the disputed domain name, the exchange of the last letter “m” against “n” as well as the addition of “-“ between the two words do not influence the overall character of the disputed domain name compared to the trademark of the Complainant. Such typosquatting is widely acknowledged as creating likelihood of confusion. It is the consensus view of WIPO panels 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 (see amongst many: Wachovia Corporation v. Peter Carrington, WIPO Case No. D2002-0775, <wochovia.com>)

The Panel therefore considers the disputed domain name to be confusingly similar to the trademarks Boehringer Ingelheim in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks or designations confusingly similar to its trademarks. Furthermore, the Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the name “Boehringer Ingelhein” or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

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

C. Registered and Used in Bad Faith

The panel follows the assessment of the Panel in the WIPO Case D2016-0021 Boehringer Ingelheim Pharma GmbH & Co.KG v. Kate Middleton that “Boehringer Ingelheim” is a well-known mark. Accordingly, the Respondent must have been aware of the Complainant and its trademarks when registering the disputed domain name. The Complainant has not authorized the Respondent to make use of a designation which is highly similar to its marks. This Panel does not see any conceivable legitimate use that could be made by the Respondent of this particular domain name without the Complainant’s

authorization.

The circumstances of this case, in particular the advertising links to competitors in the field of the Complainant furthermore indicate that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location. The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with 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. **BOEHRINGER-INGELHEIN.COM**: Transferred

PANELLISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2016-05-10

Publish the Decision