Decision for dispute CAC-UDRP-101449

Case number	CAC-UDRP-101449
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Domain names	boehringer-inqelheim.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	BOEHRINGER INGELHEIM INTERNATIONAL GMBH

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Tia Seki

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

In this proceeding, the Complainant relies on the following trademarks:

- BOEHRINGER INGELHEIM (word), the US, trademark registration No. 2096336, US serial No. 74667607, filed on April 26, 1995 and registered on September 16, 1997, covering goods in class 5;
- BOEHRINGER INGELHEIM (word), international registration No. 221544 of July 2, 1959, covering goods in classes 1, 2, 3, 4, 5, 6, 16, 17, 19, 29, 30 and 32;
- BOEHRINGER INGELHEIM (device), international registration No. 722462 of July 2, 1999, covering goods in classes 5, 10 and 30;
- BOEHRINGER INGELHEIM (device), EUTM registration No. 000084657, registration date June 2, 1998 and duly renewed, covering goods in class 5;
- BOEHRINGER (word), international registration No. 799761 of December 2, 2002, covering goods and services in classes 1, 3, 5, 10, 16, 30, 31, 35, 41, 42 and 44.

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 origins dating back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein.

Ever since, the Complainant has become a global research-driven pharmaceutical enterprise and has today about 140 affiliated companies worldwide, with approximately 46,000 employees. The two main activity areas are "human pharmaceuticals" and "animal health". In 2013, net sales of the Boehringer group of companies amounted to around 14,1 billion Euros.

The Complainant owns a large portfolio of trademarks including the wording "BOEHRINGER INGELHEIM" and the Complainant owns multiple domain names containing "BOEHRINGER INGELHEIM" among which <boehringer-ingelheim.com>, registered on September 1, 1995, and <boehringeringelheim.com> registered on July 4, 2004.

The disputed domain name <boehringer-inqelheim.com> was registered on February 13, 2017 by the Respondent.

The Complainant contends that the disputed domain name is confusingly similar to its BOEHRINGER INGELHEIM trademarks and associated domain names as the disputed domain name constitutes a misspelled word of the Complainant’s registered trademarks.

The Complainant states that the replacement of the letter “G" by the letter “Q” in the word INGELHEIM, and the use of the gTLD “.COM” is not sufficient to escape the finding that the disputed domain name <boehringer-inqelheim.com> is confusingly similar to the Complainant’s trademarks and it does not change the overall impression of the designation as being connected to the trademark BOEHRINGER INGELHEIM®.

The disputed domain name contains an obvious misspelling of the Complainant’s trademark.

According to the Complainant, the Respondent does not have rights or legitimate interests in the disputed domain name.

The 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.

The Complainant states that the Respondent is not affiliated with him nor authorized by him in any way. 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 does not carry out any activity for, nor has any business with the Respondent.

The disputed domain name points to a parking webpage displaying sponsored links related to the Complainant’s activity. The Complainant contends that it is not legitimate non-commercial or fair use of the disputed domain name.

Thus, the Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain name, and has registered and used the disputed domain name only to create a likelihood of confusion with the Complainant’s trademarks.

The Complainant states that by registering the disputed domain name <boehringer-inqelheim.com> with the misspelling of the trademark BOEHRINGER INGELHEIM, this was intentionally designed to be confusingly similar with the Complainant’s trademarks.

Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.

The Respondent uses the disputed domain name in connection with a website which points to a parking webpage displaying

sponsored links related to the Complainant's activity. The Complainant contends that this use is only to attract internet traffic.

Therefore, 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. Identical or confusingly similar with the Complainant's trademark

The Complainant is the owner of numerous trademark registrations incorporating the "BOEHRINGER INGELHEIM" element.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), see paragraph 1.1: "If the complainant owns a trademark, then it generally satisfies the threshold requirement of having trademark rights."

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 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 BOEHRINGER INGELHEIM marks.

The only difference between the disputed domain name and the Complainant's BOEHRINGER INGELHEIM trademark is the use of the letter "q" instead of the letter "g" ("inqelheim" instead of "ingelheim"), which is an obvious misspelling of the Complainant's trademark.

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 Respondent failed to respond.

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 pointed to a parking webpage displaying sponsored links.

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.

While it is generally recognized that use of a domain name to post parking and landing pages or links may be permissible in some circumstances, it would not of itself confer rights or legitimate interests arising from a "bona fide offering of goods or services" or from "legitimate noncommercial or fair use" of the domain name. An example of permissible use would be a situation where domain names consisting of dictionary or common words or phrases support posted PPC links genuinely related to the generic meaning of the domain name (see paragraph 2.6 of the WIPO Overview 2.0).
However, this is not the case here.

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 Respondent’s lack of rights or legitimate interests in the disputed domain name.

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).

The Respondent’s use of the disputed domain name with the intention to attract Internet users for commercial gain is established by the sponsored links on its website. The likelihood of confusion as to source, sponsorship, affiliation or endorsement is established by the fact that the disputed domain name is confusingly similar to the trademarks and the Complainant’s own domain names and is an example of “typosquatting”.

Previous panels expressed their opinion on “typosquatting”:
- “Typosquatting by reference to another's mark does not provide rights or legitimate interests and also involved registration and use in bad faith (see, for example, the cases identified in paragraph 1.10 of the WIPO Overview 2.0)” – see CAC Case No. 101287 (<playspennies.com>) and
- “The registration of the 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 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.

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. **BOEHRINGER-INQELHEIM.COM**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2017-03-24

Publish the Decision