Decision for dispute CAC-UDRP-102922

Case number	CAC-UDRP-102922
Time of filing	2020-02-20 12:26:03
Domain names	boehringeringeiheimpetrebates.com, boehringeringeleimpetrebates.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Super Privacy Service LTD c/o Dynadot

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 argues that the disputed domain names <boehringeringeiheimpetrebates.com> and <boehringeringeleimpetrebates.com> and the Complainant's registered trademarks BOEHRINGER-INGELHEIM are confusingly similar.

Particularly, the Complainant contends that its trademarks are fully contained within the disputed domain names and points out that the elements in which the signs vary, i.e. “PET REBATES”, are generics and descriptive with regard to the service offered by the Complainant at the webpage www.boehringeringelheimpetrebates.com

FACTUAL BACKGROUND

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

The Complainant is a pharmaceutical group of companies founded in 1885, with operations worldwide and with about 50 000 employees. Its main businesses are human pharmaceuticals and animal health. Net sales in 2018 amounted to about EUR 17.5 billion.

Besides the International trademarks No. 221544 dated 2 July, 1959 and No. 568844 dated 22 March, 1991, the Complainant is also the registrant of numerous domain names incorporating that trademarks, including in particular <boehringer-ingelheim.com> (since 1 September 1995) and <boehringeringelheim.com> (since July 4, 2004).

No information is known about the Respondent who registered the disputed domain names <boehringeringeiheimpetrebates.com> and <boehringeringeleimpetrebates.com> on 10 February, 2020 under a privacy statement.

The disputed domain names currently redirect to a parking pages with commercial links.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT' CONTENTIONS:

Identical or confusingly similar

The Complainant argues that the disputed domain names <boehringeringeiheimpetrebates.com> and <boehringeringeleimpetrebates.com> and the Complainant's registered trademarks BOEHRINGER-INGELHEIM are confusingly similar.

Particularly, the Complainant contends that its trademarks are fully contained within the disputed domain names and points out that the elements in which the signs vary, i.e. “PET REBATES”, are generics and descriptive with regard to the service offered by the Complainant at the webpage https://www.boehringeringelheimpetrebates.com/

Moreover, according to the Complainant, the substitution and deletion of one letter in the disputed domain names is less relevant and does alter the overall similar impression the domain names and the registered trademarks leave.

The Complainant also points out that the applicable Top-Level suffix “-com” does not per se prevent the likelihood of confusion.

No rights or legitimate interests

The Complainant argues that there is no evidence at all that the Respondent is commonly known by the disputed domain names or a name corresponding to the disputed domain names, nor that the Respondent is making any businesses with the Complainant. Moreover, the Complainant states that the Respondent has not been licensed or authorized in other way to use the Complainant’s trademarks nor to apply for or use any domain names incorporating such trademarks.

Registered and used in bad faith

As far as bad faith registration is concerned, the Complainant states due to its worldwide presence and considering that the Complainant’s sign “BOEHRINGER-INGELHEIM” is a well-known mark, the Respondents could not be unaware of the Complainant rights over the name BOEHRINGER-INGELHEIM at the time of the disputed domain names registration.

Moreover, the Complainant contends that the Respondent choose to register the disputed domain names to create a confusion with the Complainant’s registered domain name <boehringeringelheimpetrebates.com>, used by the Complainant to offer rebates on pet health products.

Finally, the Complainant contends that the disputed domain names resolve to parking pages with commercial links both related and unrelated to the Complainant and its activities. Consequently, according to the Complainant, the Respondent has

attempted to attract Internet users for commercial gain to his own websites thanks to the Complainant's trademarks, which is an evidence of bad faith.

RESPONDENT'S CONTENTIONS:

The Respondent did not respond to the Complaint.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are identical or confusingly similar to trademarks 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 names (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 names have been registered 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

Paragraph 15 of the Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as appropriate.

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 evidences provided in support of them.

1.
The Panel finds that the disputed domain names <boehringeringeiheimpetrebates.com> and <boehringeringeleimpetrebates.com> almost fully incorporate the Complainant's registered trademarks "BOEHRINGER-INGELHEIM", declared to be well-known mark with high degree of distinctiveness (see Boehringer Ingelheim Pharma GmbH & Co.KG v. Kate Middleton, Case No. D2016-0021).

The additional elements "PETREBATES" in the disputed domain names have lower degree of distinctiveness and therefore are not sufficient to differentiate the signs. Moreover, the variation in some letters and the gTLD ".com", which represents a technical requirement of registration, do not alter the overall very similar impression the disputed domain names and the registered trademarks produce.

Accordingly, the Panel considers that the disputed domain names and the Complainant's previously registered trademarks are confusingly similar and infers that paragraph 4(a)(i) of the Policy is satisfied.

2. According to the Complainant's contentions and evidences submitted within this proceeding, which were not disputed, the

Respondent does not appear to be in any way related to the Complainant's business, does not act as the agent of the Complainant nor currently known and has never been known as “BOEHRINGER-INGELHEIM”, or any combination of this trademark.

Furthermore, the disputed domain names <boehringeringeiheimpetrebates.com> and <boehringeringeleimpetrebates.com> are not associated with any business activity and resolve currently in parking pages with the sole purpose of attracting Internet users and redirecting them to other webpages. Therefore, the Respondent does not appear to have a legitimate interest in the disputed domain names but instead appears to use the disputed domain names for his own commercial gain by creating a likelihood of confusion with the Complainant's well-known trademark.

Consequently, and in the absence of a Response, the Panelist finds that the Respondent have no rights or legitimate interests in the disputed domain names, so that the requirements of paragraph 4(a)(ii) of the Policy are met.

3. Given the widespread presence of the Complainant’s trademarks and the way how the Respondent is using the disputed domain names which are confusingly similar to the Complainant’s trademarks, the Panel finds that the Complainant intended to free ride on the reputation of Complainant’s trademarks in an attempt to exploit, for its commercial gain, Internet users destined for Complainant.

In other words, in the absence of sufficient evidence to the contrary and rebuttal from the Respondent, the Panelist infer that by choosing to register the domain names which are similar to Complainant’s trademarks and by intending to exploit, for commercial gain, Internet users destined for Complainant, the Respondent’s activity is indicative of registration and use of the disputed domain names in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied 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. **BOEHRINGERINGEIHEIMPETREBATES.COM**: Transferred
2. **BOEHRINGERINGELEIMPETREBATES.COM**: Transferred

PANELLISTS

Name	**JUDr. Hana Císlerová, LL.M.**

DATE OF PANEL DECISION 2020-03-20

Publish the Decision