Decision for dispute CAC-UDRP-102129

Case number	**CAC-UDRP-102129**
Time of filing	**2018-08-20 09:49:41**
Domain names	**boehringer-ingelheirn.com**

Case administrator

Name	**Sandra Lanczová (Case admin)**

Complainant

Organization	**Boehringer Ingelheim Pharma GmbH & Co.KG**

Complainant representative

Organization	**Nameshield (Daria Baskova)**

Respondent

Organization	**boehringer Inc**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceeding that is pending or decided which relates to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant established that BOEHRINGER INGELHEIM 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, Germany.

The Complainant is the owner of a large portfolio of trademarks containing the wording “BOEHRINGER INGELHEIM”, including the international trademark (WIPO trademark)"BOEHRINGER-INGELHEIM®", in class 01, 02, 03, 04, 05, 06, 16, 17, 19, 29, 30 and 32, since July 2nd 1959.

The Complainant is the owner of a large portfolio of domain names including the same distinctive wording “BOEHRINGER INGELHEIM”, such as <boehringer-ingelheim.com>, registered since September 1st, 1995, and <boehringeringelheim.com>, registered since July 4th, 2004.

The Respondent has not submitted any evidence trying to establish its rights.

FACTUAL BACKGROUND

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

- FORUM Case No. 1779192, The Burton Firm, P.A. v. Mena Dre (“The domain name contains the mark in its entirety, but for a misspelling of Complainant’s mark achieved by replacing the letter “m” with the combination of letters “r” and “n” to create a visually similar appearance, plus the addition of the generic Top Level Domain (“gTLD”) “.com.” These alterations of the mark do not save it from the realm of confusing similarity under the standards of the Policy.”);

- FORUM Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group (“The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy ¶ 4(a)(ii).”);

- FORUM Case No. 1785347, Morgan Stanley v. Francis Mccarthy / Baltec Marine Llc (“Inactive holding of a domain name does not qualify as a bona fide offering of goods or services within the meaning of Policy ¶ 4(c)(i), or a legitimate non-commercial or fair use within the meaning of Policy ¶ 4(c)(iii).”);

- CAC Case No. 101971, Boehringer Ingelheim Pharma GmbH & Co.KG v. BRIANNE HOAG (“The difference between the Complainant's trademarks and the disputed Domain Name is so thin, and the Complainant is so well-known (a pharmaceutical group of companies with roots going back to 1885, with 140 affiliated companies world-wide today and roughly 46,000 employees) that the Panel can hardly believe the the Respondent was not aware of the existence of the Complainant.”);

- WIPO Case No. D2016-1546, BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes (“…the registration of the Domain Name which contains obvious misspelling of the Complainant’s BOEHRINGER-INGELHEIM trademark and which is virtually identical to the Complainant’s <boehringer-ingelheim.com> domain name constitutes registration and use bad faith.”);

- FORUM Case No. 1779192, The Burton Firm, P.A. v. Mena Dre (“”the challenged <theburtonfirrn.com> domain name is not in active use, but instead resolves to a website that lacks any content. Failure to make legitimate active use of a domain name evidences the absence of both a bona fide offering of goods or services by means of it within the ambit of Policy ¶ 4(c)(i) and a legitimate noncommercial or fair use of it within the compass of Policy ¶ 4(c)(iii).”).

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant established that BOEHRINGER INGELHEIM 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, Germany.

The Complainant is the owner of a large portfolio of trademarks containing the wording “BOEHRINGER INGELHEIM”, including the international trademark (WIPO trademark)"BOEHRINGER-INGELHEIM®", in class 01, 02, 03, 04, 05, 06, 16, 17, 19, 29, 30 and 32, since July 2nd 1959.

The Complainant is the owner of a large portfolio of domain names including the same distinctive wording “BOEHRINGER INGELHEIM”, such as <boehringer-ingelheim.com>, registered since September 1st, 1995, and <boehringeringelheim.com>, registered since July 4th, 2004.

The disputed domain name was registered on August 13th, 2018 and is not currently in active use.

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

1. Identical or confusingly similar

The Complainant contended that the disputed domain name is confusingly similar to its registered trademark "BOEHRINGER INGELHEIM" and to its domain names. The Complainant also stated that the trademark BOEHRINGER INGELHEIM® is misspelled in the disputed domain name, and the substitution of the letter “M” with the letters “R” and “N” in the disputed domain name is not sufficient to avoid the likelihood of confusion with the Complainant’s trademark.

The Complainant also introduced previously decided cases (FORUM Case No. 1793884, 1779192, WIPO case No. D2016-002, CAC cases No. 101517, No. 101971) to support its allegations that it has widely established its trademark rights and misspellings in similar instances have been held not to defeat a visually similar appearance.

The Panel agrees that this is a case involves typosquatting, and in the disputed domain name, the last letter “m” in the Complainant’s registered trademark Boehringer Ingelheim has been replaced by a combination of letters "r" and "n", causing a high level of visual similarity. "BOERINGER INGELHEIRM" is not of the nature of daily language uses and clear typosuqatting does not preclude a finding of confusing similarity in any domain name. Given the distinctiveness of the “BOERINGER INGELHEIRM” trademark as owned by the Complainant and the clear typosquatting as established by the Complainant, the Panel concluded that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

Although the Respondent did not file an administratively compliant (or any) response. the Complainant is still 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 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 contended that 1) the Respondent has no rights or legitimate interests in respect of the disputed domain name and 2) it is not related in any way with the Complainant.

According to the information of the Respondent as provided by the Registrar, the name of the Respondent’s organization "boehringer Inc" suggests a similarity to the first part of the disputed domain name "boehringer". However, a further search in the California Secretary of State's Business Entity records showed that no active business entity called "boehringer Inc" shares the Respondent 's provided address "2730 Oak Rd 56, Walnut Creek, CA 94597". The Respondent’s contact email address "suhum@kguis.com" also does not suggest any connection to the business name “boehringer Inc”. An USPTO trademark search also has not revealed any record that the Respondent has any trademark rights associated with the word “Boehringer” or “Boehringer-Ingelheirn” in the United States.

The Complainant also contended that it does not carry out any activity for, nor has any business with the Respondent. It has

never licensed nor authorized 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.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Bad faith registration and use

The Complainant contended that Given the distinctiveness of the Complainant's trademarks and its worldwide reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark. However, in order to satisfy paragraph 4(a)(iii) of the UDRP, purely alleging that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark is not sufficient.

In this case, the Panel finds that the disputed domain name is registered fairly recently (on August 13th 2018) and the registration of the trademark "BOEHRINGER INGELHEIRM" has long predated the registration of the disputed domain name. The disputed domain name is also not in active use. Given fairly short amount of time that the disputed domain name has been registered under the Respondent, there is no way to infer any legitimate reason the Respondent has registered the disputed domain name along with using the "boehringer Inc" as the name of its organization. It might as well be the case the website available through the disputed domain name has been registered as an inactive 'parking' site. Therefore, the Panel finds for the Complainant on the ground of the improbability of a legitimate purpose pursued by the Respondent in the circumstances. The self-evident fact of typosquatting with such a distinctive name also weighs heavily in the determination that with the nature of the name and its potential attraction to those intending to obtain some illegitimate advantage from its registration, the Respondent is highly likely to have registered and used the disputed domain name in bad faith.

In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the combination of facts in this case that the Respondent had the "BOERINGER INGELHEIRM" trademark in mind when registering the disputed domain name.

For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of 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-INGELHEIRN.COM**: Transferred

PANELLISTS

Name	**Carrie Shang**

DATE OF PANEL DECISION 2018-09-11

Publish the Decision