

Decision for dispute CAC-UDRP-104134

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| Case number | CAC-UDRP-104134 |
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| Time of filing | 2021-11-05 09:07:34 |
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| Domain names | merial.xyz |
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Case administrator

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| Organization | Denisa Bilík (CAC) (Case admin) |
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Complainant

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| Organization | BOEHRINGER INGELHEIM ANIMAL HEALTH FRANCE |
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Complainant representative

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| Organization | NAMESHIELD S.A.S. |
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Respondent

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| Organization | PremiumDomainSeller |
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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 is the owner of trademark registrations across various jurisdictions, inter alia International registration no. 1272154 MERIAL, registered on August 12, 2015, designating also the United States of America and China, where the Respondent is most likely located, for various goods in class 03 (hereinafter referred to as the "Trademark").

FACTUAL BACKGROUND

The Complainant is a global leader in the animal health industry and part of family-owned company Boehringer Ingelheim, founded in 1885. In 2017, the company MERIAL was acquired by Boehringer Ingelheim, where it was merged into the Complainant. The Complainant provides information on its goods and services online at <boehringer-ingelheim.com> but also owns registered domain names including the trademark, such as <boehringer-merial.com>. The Complainant provided evidence that the Trademark is strongly connected with the Complainant. In particular, nearly all of the search results of a Google search for the Trademark refer to the Complainant.

The disputed domain name was registered on October 21, 2021, and resolves to a website where the domain name is offered for sale for USD 788.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is identical to the Trademark.

Furthermore, the Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name. In this regard, the Complainant argues that the Respondent is not commonly known by the disputed domain name, that the Respondent is not affiliated with nor authorized by the Complainant in any way, that the Complainant does not carry out any activity for, nor has any business with the Respondent, that neither license nor authorization has been granted to the Respondent to make any use of the Trademark or apply for registration of the disputed domain name, and that the disputed domain name is simply offered for sale, which evidences the Respondent's lack of rights or legitimate interest.

Finally, the Complainant states that the disputed domain name was registered and is being used in bad faith. In this regard, the Complainant contends that the Trademark is long-established and solely connected to the Complainant and that it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of Complainant's rights in the Trademark. With regard to bad faith use, the Complainant argues that the Respondent fails to make active use of the disputed domain name and has registered the disputed domain name only in order to sell it back for out-of-pocket costs, which both is evidence of bad faith registration and use.

RESPONDENT:

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

Under paragraph 4(a) of the Policy, the Complainant must prove that each of the following three elements is present:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

1. The Panel accepts that the disputed domain name is identical to the Trademark. It is well established that the specific top-level domain name is generally not an element of distinctiveness that can be taken into consideration when evaluating the identity or confusing similarity between a complainant's trademark and a disputed domain name.
2. The Complainant has substantiated that the Respondent has no rights or legitimate interests in the disputed domain name. The Panel finds that the Complainant has fulfilled its obligations under paragraph 4(a)(ii) of the Policy. The Respondent did not deny these assertions in any way and therefore failed to prove any rights or legitimate interests in the disputed domain name. Based on the evidence on file, the Panel cannot find any rights or legitimate interests of the Respondent either. Accordingly, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in respect of the disputed domain name under paragraphs 4(a)(ii) and 4(c) of the Policy.
3. The Panel is also satisfied that the Respondent registered the disputed domain name with full knowledge of the Complainant and its rights in the Trademark as the Trademark is long-established and strongly connected with the Complainant. In addition, the Respondent calls itself "PremiumDomainSeller" and is most likely active in domain trading. Persons working in this field are generally more sensitive to the use of trademarks in domain names, as this regularly leads to conflicts. In the Panel's view, this also suggests that the Respondent in all likelihood registered the disputed domain name with knowledge of the Complainant's rights in the Trademark.

The Respondent's use of the domain name redirects Internet users to a placeholder website that informs that the disputed domain name is on sale. It clearly states that the Respondent offers the disputed domain name for sale for the amount of USD 788. Such an offer to sell a domain name on a public website has in many decisions been found to indicate that a domain name has primarily been registered with the intention of selling it to the complainant or one of its competitors in return for a payment that exceeds the costs directly related to the domain name under paragraph 4(b)(i) of the Policy. In addition, the Respondent obviously uses false whois information as it combines Chinese (street, city, phone number) and US (country) contact information, which, in the overall assessment of the circumstances, is a further indication of bad faith

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MERIAL.XYZ**: Transferred

PANELLISTS

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| Name | Peter Müller |
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| DATE OF PANEL DECISION | 2021-11-27 |
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Publish the Decision