

Decision for dispute CAC-UDRP-105152

Case number	CAC-UDRP-105152
Time of filing	2023-01-26 10:34:16
Domain names	boehringer-ingelheim.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Tim Akofo
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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 owns a large portfolio of trademarks including the wording "BOEHRINGER INGELHEIM" in several countries, such as the international trademark BOEHRINGER-INGELHEIM n°221544, registered since 2 July 1959, and the international trademark BOEHRINGER INGELHEIM n°568844 registered since 22 March 1991.

FACTUAL BACKGROUND

The Complainant, BOEHRINGER INGELHEIM, is a German family-owned group of pharmaceutical companies founded in 1885, founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein. The Complainant conducts business in three main areas: human pharmaceuticals, animal health, and biopharmaceuticals. In 2021, BOEHRINGER INGELHEIM achieved net sales of 20.6 billion euros.

The Complainant owns multiple domain names consisting in the wording "BOEHRINGER INGELHEIM", such as <boehringer-ingelheim.com> registered since 1995.

The disputed domain name <boehringer-ingelheim.com> was registered on 19 January 2023 and resolves to a parking page with commercial links.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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

Paragraph 4(a)(i) of the Policy requires the complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

In the present case, the Complainant has provided sufficient evidence of its International trademark registrations for the BOEHRINGER-INGELHEIM trademark in numerous jurisdictions.

The disputed domain name, <boehringer-imgelheim.com>, is confusingly similar to its trademark BOEHRINGER-INGELHEIM and its domain names associated, as it consists of a misspelling of the Complainant's BOEHRINGER-INGELHEIM trademark in its entirety.

This Panel agrees with the Complainant (as well as other UDRP Panels) that misspellings such as the replacement of a letters, as in the present case here the replacement of an "n" with an "m" (and the addition of gTLD ".com") does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trade mark pursuant to the Policy.

As such, this Panel holds that paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

A Complainant is required to make 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 proof to demonstrate it has rights or legitimate interests in the compromised domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

This Panel notes the statements of the Complainant and current factors in the present case:

- The Complainant is not related to the Respondent nor has it authorised the Respondent to use its trademark or give it permission to register the disputed domain name.
- There is no evidence to suggest the Respondent is commonly known by the disputed domain name.

- The disputed domain name resolves to a site with pay-per-click links, which does not constitute a bona fide offering of goods and services, or a legitimate noncommercial or fair use.
- The Complainant mentions previous UDRP decisions to prove that typosquatting has been considered a further indication of a lack of legitimate interests in disputed domain name.

This Panel acknowledges that the Respondent has not rebutted any of the Complaint's contentions nor has it justified why it should be allowed to register and use a domain name containing a typo or incorrect spell of the Complainant's trademark.

As such, the Panel agrees with Complainant's contentions and finds that the Respondent does not have rights or a legitimate interest in the disputed domain name and, hence, paragraph 4(a)(ii) of the Policy has been satisfied.

C. Registered and Used in Bad Faith

Typosquatting has been defined as a practice by which "a registrant deliberately introduces slight deviations into famous marks for commercial gain" (see NAF Case FA 0303000149187, Marriott Int'l, Inc. v. Seocho, WIPO Case No. D2005-0444), to which some UDRP Panellist concluded that "typosquatting itself is evidence of relevant bad faith registration and use" (See WIPO Case No. 2019-1600, Redbox Automated Retail v. Milen Radumilo).

In this case, given the distinctiveness of the Complainant's trademark, its reputation (see for ease of reference, WIPO Case No. D2019-0208, Boehringer Ingelheim Pharma GmbH & Co. KG v. Marius Graur, CAC Case No. 102274, BOEHRINGER INGELHEIM PHARMA GMBH & CO. KG v. Karen Liles), coupled with the typo in the disputed domain name and the time when it was registered, this Panel agrees with the Complainant, that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark. (See for ease of reference, WIPO Case No. D2016-1546, Boehringer Ingelheim Pharma GmbH & Co. KG v. Martin Hughes <boehringer-ingelheim.com> ("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 in bad faith."))

As per the use, this Panel notes that the disputed domain name currently resolves to a parking page with commercial links, so called pay-per-click (or PPC) links, which (in this case) relate to the pharma industry. PPC links indicate bad faith use being "disruptive of the Complainant's business, as it diverts and confuses Internet users for commercial gain" (see for instance WIPO Case No. 2022-4237, Vorwerk International AG vs. Host Master).

As such the Panel finds that 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).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boehringer-ingelheim.com**: Transferred

PANELLISTS

Name	Laura Martin-Gamero Schmidt
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DATE OF PANEL DECISION **2023-03-05**

Do not publish the Decision
