

Decision for dispute CAC-UDRP-105258

Case number	CAC-UDRP-105258
Time of filing	2023-03-07 11:16:14
Domain names	boehringer-ingelheim.org

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

Organization	Desk Info
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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

International trademarks BOEHRINGER-INGELHEIM n°221544, registered on July 2nd, 1959 and n°568844 registered on March 22nd, 1991.

FACTUAL BACKGROUND

The Complainant is a German 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. Ever since, BOEHRINGER INGELHEIM has become a global research-driven pharmaceutical enterprise and has today about roughly 52,000 employees. The three main business areas of BOEHRINGER INGELHEIM are the three business areas Human Pharma, Animal Health and Biopharmaceutical Contract Manufacturing. In 2021, BOEHRINGER INGELHEIM achieved net sales of 20.6 billion euros.

The disputed domain name <boehringer-ingelheim.org> was registered on February 18, 2023. It resolves to a registrar parking page. MX servers are configured.

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- Respondent has no rights or legitimate interests in respect of the domain name; and
- the domain name has been registered and is being used in bad faith.

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at ¶ 4.3.

As to the first element, the Complainant has shown that it has rights in international trademarks BOEHRINGER-INGELHEIM n° 221544, registered on July 2nd, 1959 and n° 568844 registered on March 22nd, 1991 and in the domain name <boehringer-ingelheim.com> registered on September 9, 1995. Further, that the BOEHRINGER INGELHEIM mark is famous. The Panel finds the disputed domain name <boehringer-ingelheim.org> to be confusingly similar to the Complainant's trademark BOEHRINGER-INGELHEIM and its <boehringer-ingelheim.com> domain name.

As to the second element, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in the domain name for purposes of paragraph 4(a)(ii) of the Policy, *i.e.*

- before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- the Respondent (as an individual, business or other organization) has been commonly known by the domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The disputed domain name <boehringer-Ingelheim.org> was registered on February 18, 2023, long after the Complainant has shown that its BOEHRINGER-INGELHEIM mark had become famous. It resolves to a registrar parking page. MX servers are configured.

The Respondent has not contested the Complainant's assertions that the Respondent is not commonly known by the disputed domain name; is not related in any way to the Complainant; the Complainant does not carry out any activity for, nor has any business with the Respondent; neither licence nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademark BOEHRINGER-INGELHEIM, nor to apply for registration of the disputed domain name, which resolves to a registrar parking page; therefore, the Respondent has not made any use of the disputed domain name since its registration and has no demonstrable plan to use the disputed domain name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the domain name <boehringer-Ingelheim.org>.

As to the third element, given the distinctiveness of the Complainant's trademark and reputation, the Panel infers that the Respondent registered the domain name with full knowledge of the Complainant's trademark. See WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell ("The Panel finds that the trademark ARCELORMITTAL is so well-known internationally for metals and steel production that it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it.").

Further, although the disputed domain name resolves to a parking page and the Respondent has not demonstrated any activity in respect of the disputed domain name, the Panel considers it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. See for instance WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows.

Finally, the fact that MX servers are configured suggests that the disputed domain name may be actively used for email purposes. See CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono ("There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.").

Thus, the Panel concludes that the Respondent has registered the disputed domain name and is using it in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. boehringer-Ingelheim.org: Transferred

PANELLISTS

Name	Alan Limbury
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DATE OF PANEL DECISION 2023-04-01

Publish the Decision