

## Decision for dispute CAC-UDRP-105370

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|----------------|--------------------------|
| Case number    | CAC-UDRP-105370          |
| Time of filing | 2023-04-19 10:39:32      |
| Domain names   | boehringer-ingelhelm.com |

### Case administrator

|      |                             |
|------|-----------------------------|
| Name | Olga Dvořáková (Case admin) |
|------|-----------------------------|

### Complainant

|              |  |
|--------------|--|
| Organization | Boehringer Ingelheim Pharma GmbH & Co.KG |
|--------------|--|

### Complainant representative

|              |                   |
|--------------|-------------------|
| Organization | NAMESHIELD S.A.S. |
|--------------|-------------------|

### Respondent

|      |                |
|------|----------------|
| Name | Gregory Thomas |
|------|----------------|

#### 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 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.

#### 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, the Complainant has become a global research-driven pharmaceutical enterprise and has today over 53,000 employees.

The disputed domain name <boehringer-ingelhelm.com> was registered on April 14, 2023. It resolves to an inactive webpage. 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.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### 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 the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as 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 paragraph 4.3; see also *eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire*, FA 157287 (Forum June 26, 2003) ('Because Complainant did not produce clear evidence to support its subjective allegations [ . . . ] the Panel finds it appropriate to dismiss the Complaint').

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 <boehringar-ingelhelm.com> 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 disputed domain name for purposes of paragraph 4(a) (ii) of the Policy, i.e.

- (i) 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
- (ii) 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 non-commercial 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 Complainant asserts 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 an inactive webpage; 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; further, the disputed domain name is a typosquatted version of the trademark BOEHRINGER-INGELHEIM.

The disputed domain name <boehringar-ingelhelm.com> was registered on April 14, 2023, many years after the registration of the Complainant's famous BOEHRINGER-INGELHEIM mark. It resolves to an inactive webpage. MX servers are configured.

These circumstances, together with the Complainant's assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the <boehringar-ingelhelm.com> domain name. See *JUUL Labs, Inc. v. Dryx Emerson / KMF Events LTD*, FA1906001849706 (Forum July 17, 2019). The Respondent has made no attempt to do so.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the domain name <boehringar-ingelhelm.com>.

As to the third element, the <boehringar-ingelhelm.com> domain name is clearly a typosquatted version of the BOEHRINGER-INGELHEIM trademark, substituting the letter "A" for the letter "E" before the hyphen and substituting the letter "L" for the letter "I" after the hyphen. Given the distinctiveness of the Complainant's trademark and its reputation, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith with full knowledge of the Complainant's trademark. The registration of the disputed domain name with the misspelling of the Complainant's trademark was intentionally designed in bad faith to be confusingly similar to that mark. Previous UDRP Panels have seen such actions as evidence of bad faith. See WIPO Case No. D2016-1546, *Boehringer Ingelheim Pharma GmbH & Co. KG v. Martin Hughes <boehringar-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 <boehringar-ingelheim.com> domain name constitutes registration and use in bad faith.")

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. See for instance: WIPO Case No. D2000-0003, *Telstra Corporation Limited v. Nuclear Marshmallows*.

Although the disputed domain name appears to be inactive, it has been set up with MX records, which suggests that it may be actively used for fraudulent 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.").

In the absence of any response, the Panel finds that the Complainant has established that the disputed domain name was registered in bad faith by the Respondent with full knowledge of the Complainant's famous mark. Further, as in the leading case of *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, there is no conceivable active use that could be made of the typosquatted domain name that would not amount to an infringement of the Complainant's trade mark rights. Accordingly, the Panel finds that the Respondent's passive use of the disputed domain name constitutes use in bad faith.

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

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boehringar-ingelhelm.com**: Transferred

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## PANELLISTS

Name Alan Limbury

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DATE OF PANEL DECISION 2023-05-12

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Publish the Decision

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