

Decision for dispute CAC-UDRP-105908

Case number	CAC-UDRP-105908
Time of filing	2023-10-26 09:22:07
Domain names	boehringer-ingelheim.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	amamfa boscho
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of other pending or decided legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademark registrations:

- International word mark "Boehringer-Ingelheim." No. 221544 protected for goods and services in Classes 1; 2; 3; 4; 5; 6; 16; 17; 19; 29; 30; 32 of the Nice Classification, with a filing date on July 2, 1959;
- International word mark "Boehringer Ingelheim" No. 568844 protected for goods and services in Classes 1; 2; 3; 4; 5; 9; 10; 16; 30; 31 of the Nice Classification, with a filing date on March 22, 1991.

The Complainant proved its ownership of the listed trademark registrations by the submitted extract from the "WIPO Madrid Monitor".

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.

Nowadays It is a global research-driven pharmaceutical enterprise and has over 53 000 employees. In 2022, BOEHRINGER

INGELHEIM achieved net sales of 24.1 billion euros (evidenced by Boehringer Ingelheim Company Profile 2023).

The Complainant proved ownership of two international trademark registrations including the wording BOEHRINGER INGELHEIM, in particular "Boehringer-Ingelheim" No. 221544, registered since July 2, 1959, and "Boehringer Ingelheim" No. 568844 registered since March 22, 1991 the submitted extract from the "WIPO Madrid Monitor".

The Complainant owns a domain name associated with the listed trademarks, such as <boehringer-ingelheim.com> registered since September 1, 1995 (proven by extract from Whois database).

According to the Registrar, the Respondent is 'amamfa boscho'. The Respondent's provided address as being at Anambra, Nigeria. The Respondent registered the disputed domain name <boehringar-ingelhaim.com> on October 19, 2023 (evidenced by extract from Whois database) (hereinafter "disputed domain name"). The disputed domain name resolves to a parking page with commercial links (evidenced by print-screen of the webpage under the disputed domain name). Besides, MX servers are configured (DNS query).

PARTIES CONTENTIONS

COMPLAINANT:

A. The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademarks.

The Complainant states that the disputed domain name is confusingly similar to its trademark based on the wording BOEHRINGER-INGELHEIM and its domain name associated.

The Complainant asserts that there is an obvious misspelling of the Complainant's trademark, i.e. the substitution of the letters "E" by the letters "A", which can be identified as a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. Previous panels have found that the slight spelling variations do not prevent a domain name from being confusingly similar to the Complainant's trademark [see CAC Case No. 102708, Boehringer Ingelheim Pharma GmbH & Co. KG v. stave co ltd <boehringar-ingelheim.com> ("It is the common view among UDRP panelists that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name, see Edmunds.com, Inc. v. Digi Real Estate Foundation, WIPO Case No. D2006-1043, <edmundss.com>. The disputed domain name is such a typosquatting domain and is accordingly confusingly similar to the trademark of the Complainant.")].

The Complainant adds that past Panels commonly stated that the gTLD is not relevant in the appreciation of confusing similarity [see WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.")].

B. The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant contends that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name [see Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii)."].

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and it is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark or apply for registration of the disputed domain name by the Complainant.

Furthermore, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark BOEHRINGER-INGELHEIM. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name.

The Complainant adds that the disputed domain name resolves to a parking page with commercial links (print-screen of the webpage under the disputed domain name).. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

C. The Complainant contends that the disputed domain name has been registered and is being used in bad faith.

The Complainant states that the disputed domain name is confusingly similar to its trademark "Boehringer-Ingelheim".

Given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

Therefore, by registering the disputed domain name with the misspelling of BOEHRINGER-INGELHEIM, the Complainant can state that this practical was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP panels have seen such actions as evidence of bad faith [WIPO Case No. D2016-1546, Boehringer Ingelheim Pharma GmbH & Co. KG v. Martin Hughes <boehringer-ingalheim.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 bad faith.")].

The Complainant adds that the disputed domain name resolves to a parking page with commercial links (print-screen of the webpage under the disputed domain name). The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own websites thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith [WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.")].

The Complainant concludes that the disputed domain name has been set up with MX records which suggests that it may be actively used for e-mail purposes. This is also indicative of bad faith registration and use because any e-mail emanating from the disputed domain name could not be used for any good faith purpose [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.")].

RESPONDENT:

No administratively Complaint 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 UDRP).

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 UDRP).

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 UDRP).

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

1. CONFUSING SIMILARITY

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark "Boehringer-Ingelheim".

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter referred to as "The WIPO Overview 3.0") in Paragraph 1.2.1 states: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The WIPO Overview 3.0 in Paragraph 1.7 states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The WIPO Overview 3.0 in Paragraph 1.9 states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin, the Panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the Panel stated that: "It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar".

The Complainant has established that owns a registered trademark based on the wording BOEHRINGER-INGELHEIM, protected for the products in connection with the pharmaceutical and chemical industry (evidenced by extract from the "WIPO Madrid Monitor").

The disputed domain name <boehringar-ingelheim.com> substitutes the letter "E" with the letter "A". No further adjustments were made to distinguish it from the Complainant's trademark. Therefore, the Complainant's trademark is incorporated in its entirety and clearly recognizable in the disputed domain name.

The substitution of the letters is a typical example of typosquatting and it intentionally creates confusing similarity with the Complainant's trademark.

The addition of the gTLD <.com> does not change the overall impression of the disputed domain name either.

Therefore, the disputed domain name, as it reproduces the "Boehringer-Ingelheim" trademark in its entirety, with simple substitution of letters is considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied Paragraph 4(a)(i) of the UDRP.

2. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make a case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman). Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the UDRP, once the complainant has made something credible (prima facie evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the Panel stated that "[i]n the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy."

In the Forum Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group, the Panel stated that: "where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain name".

In the present case, the identification data about the registrant are not shown in the Whois database. Therefore, the Respondent is not identified in the Whois database as the disputed domain name holder (evidenced by extract from the Whois database). However, according to the Registrar Verification, the registrant and the disputed domain name holder is the Respondent. To summarize, because of a lack of information about the identification of the registrant of the Whois database, the Respondent could not be known by the disputed domain name.

In addition, the Respondent is not related in any way to the Complainant and the Complainant has never granted any license nor

authorization to the Respondent to use the Complainant's trademark or apply for registration of the disputed domain name.

Moreover, the disputed domain name resolves to a parking page with commercial links (demonstrated by print-screen of the webpage under the disputed domain name). Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use (Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend; WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe).

The Respondent did not reply to the Complaint and so failed to demonstrate its rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the UDRP.

3. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain name in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

The WIPO Overview 3.0 in Paragraph 3.3 states: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding."

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the Panel stated: "when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted."

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the Panel stated that: "In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use."

In the Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants, the Panel stated that: "The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy ¶¶ 4(c)(i) and (iii)."

In the CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono, the Panel stated that: "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 present case, the Complainant proved that owns the trademark "Boehringer-Ingelheim", (registered since 1991) and the rights to the domain name associated <Boehringer-ingelheim.com> (registered since 1995).

Past panels have decided that the Complainant's trademark "Boehringer-Ingelheim" has very distinctive nature and certain reputation (the WIPO Case No. D2019-0208, Boehringer Ingelheim Pharma GmbH & Co. KG v. Marius Graur; the CAC Case No. 102274, BOEHRINGER INGELHEIM PHARMA GMBH & CO.KG v. Karen Liles).

Therefore, this Panel states that the Respondent must have been aware of the Complainant's trademark and its reputation before the registration of the disputed domain name on October 19, 2023.

As mentioned earlier, the disputed domain name resolves to a parking page with commercial links (proven by print-screen of the webpage under the disputed domain name). Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use (Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend; WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe). Use of the disputed domain name for the purpose of commercial links can be considered as an attempt from the Respondent to obtain a commercial gain by creating confusion with the Complainant's reputation. By that, the Respondent has not demonstrated any activity that could be considered legitimate and in good faith.

Finally, as the Complainant pointed out, the disputed domain has active MX records (evidenced by DNS query), which indicates it may be actively used for e-mail purposes. When the intentional creation of confusing similarity is established with a connection to a commercial parking page, it cannot be presumed that such e-mail activities would be in good faith.

Following the above-mentioned, the Panel finds that the Complainant has satisfied Paragraph 4(a)(iii) of the UDRP.

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 Radim Charvát

DATE OF PANEL DECISION 2023-11-28

Publish the Decision
