

Decision for dispute CAC-UDRP-105952

Case number	CAC-UDRP-105952
Time of filing	2023-11-09 09:14:34
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	samantha garsons
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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 very large international portfolio of registered trade marks including the word mark, "BOEHRINGER INGELHEIM," as well as many figurative marks which include that as the word element. These include an EUTM no. 2493195 for the word mark registered in 2003 in classes 1, 3, 5, 9, 10, 16, 30, 31, 41, 42. There are also many international marks including, the stylised word mark BOEHRINGER INGELHEIM, IR no.221544, registered in 1959 and IR no. 568844 registered in 1991. The Complainant also owns many domain names which include the name and word mark, "BOEHRINGER INGELHEIM", such as <boehringer-ingelheim.com> which it registered in 1995 and <boehringeringelheim.com> registered in 2004. In jurisdictions that protect rights arising from use, the Complainant also has unregistered rights arising from its very substantial use in trade.

FACTUAL BACKGROUND

The Complainant is a German family-owned pharmaceutical group with roots that go back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein. From those early beginnings, the Complainant has become a global research-driven pharmaceuticals heavy-weight with approximately 50,000 employees. The three main business areas of the Complainant are: human pharmaceuticals, animal health and biopharmaceuticals. In 2022, the Complainant achieved net sales of around 24.1 billion euros.

The disputed domain name <boehringer-ingelheim.com> was registered on 3 November 2023 and is parked and its MX servers are configured. Nothing is known of the Respondent other than name and jurisdiction.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant says the disputed domain name is confusingly similar to its trademark BOEHRINGER-INGELHEIM and is an obvious misspelling, by the omission of the letter "N", and is therefore classic typosquatting. It says that misspelling does not prevent the disputed domain name from being confusing similar to the Complainant's trademark. Please see for instance CAC Case No. 102708, Boehringer Ingelheim Pharma GmbH & Co.KG v. stave co ltd <boehringer-ingelheim.com>.

The Complainant says 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 The Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group. Furthermore, the Complainant says typosquatting can be evidence that a respondent lacks rights and legitimate interests in the domain name. See The Forum Case No. 1765498, Spotify AB v. The LINE The Line / The Line and The Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Hems / The Hackett Group. It also says the disputed domain name resolves to a parking page with commercial links and so it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. See The Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe.

Finally, given the distinctiveness of the Complainant's trademark and its reputation, it says it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trade mark. In addition to the commercial links, the disputed domain name has been set up with MX records which suggests that it may be actively used for e-mail purposes and this is also indicative of bad faith registration and use because no e-mail from the disputed domain name could have a good faith purpose. See for instance 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 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 UDRP, the Policy, a complainant can only succeed in administrative proceedings if the panel finds:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A complainant must prove that each of these three elements are present.

In this case, the Complainant, and its name and mark, are world famous due to long use in trade. It is a well-known mark. The disputed domain name is <boehringer-ingelheim.com>. There is only one-character difference between the mark and the disputed domain name—the missing N in the disputed domain name. So, the Complainant’s name and mark is used in full. This is a blatant and obvious case of typosquatting and also an attempt at impersonation.

As to the second limb, here, there is no legitimate use or right on the face of the matter. 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. The Respondent has not come forward to explain the selection of the disputed domain name.

While passive use of a domain name is not necessarily in bad faith, it is highly fact sensitive. Here the choice of the .com suggests the domain might be official. However, this case is taken over the line by the configuration of the MX records, which suggests that there is use and it is by e-mail and that cannot be for any legitimate reason, see CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono.

Where a domain name includes a famous trade mark, there is no use of the domain name (and so no overt legitimate right or interest) and a respondent has not come forward with any explanation for his selection of the name - or indeed, any answer, then a finding of bad faith is fair, as are the appropriate inferences against the respondent. This is sometimes known as the passive Bad Faith test and it is met in this case. See WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows and – WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

The Complainant has discharged its burden under 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	Victoria McEvedy
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DATE OF PANEL DECISION 2023-12-13

Publish the Decision
