Decision for dispute CAC-UDRP-106031

Case number	CAC-UDRP-106031
Time of filing	2023-12-05 10:36:41
Domain names	boahringer-ingelheim.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Grace Kid

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 July 2, 1959 and duly renewed, and the international trademark BOEHRINGER INGELHEIM n°568844 registered since March 22, 1991.

Furthermore, the Complainant owns multiple domain names consisting in the wording “BOEHRINGER INGELHEIM”, such as <boehringer-ingelheim.com> registered since 1995-09-01.

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 over 53,000 employees. The three main business areas of BOEHRINGER INGELHEIM are the three business areas Human Pharma, Animal Health and Biopharmaceutical Contract Manufacturing. In 2022, BOEHRINGER INGELHEIM achieved net sales of 24.1 billion euros.

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 July 2, 1959 and duly renewed, and the international trademark BOEHRINGER INGELHEIM n°568844 registered since March 22, 1991. Furthermore, the Complainant owns multiple domain names consisting in the wording “BOEHRINGER INGELHEIM”, such as <boehringer-ingelheim.com> registered since 1995-09-01.

The disputed domain name <boahringer-ingelheim.com> was registered on November 27th, 2023 and resolves to an inactive website.

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

The obvious misspelling of the Complainant’s trademark BOEHRINGER-INGELHEIM, i.e. the substitution of the letter “E” by the letter “A”, is in the view of the Complainant characteristic of a typosquatting practice intended to create confusing similarity between the Complainant’s trademark and the disputed domain name.

Furthermore, the Complainant contends that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

Thus, the Complainant states that the disputed domain name is confusingly similar to the Complainant’s trademark.

The Respondent contends that the Respondent is not identified in the Whois database as the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he 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.

Complainant states that neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark BOEHRINGER-INGELHEIM, 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.

Finally, the disputed domain name points to an inactive page. The Complainant contends that the Respondent did not use the disputed domain name, and it confirms that Respondent has no demonstrable plan to use the disputed domain name.

Thus, the Complainant contends that the Respondent has no rights or legitimate interest on the disputed domain name.

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 the trademark BOEHRINGER-INGELHEIM, the Complainant states that this practical was intentionally designed to be confusingly similar with the Complainant’s trademark.

Furthermore, the disputed domain name points to an inactive page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and 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.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

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. The disputed domain name is confusingly similar to the protected mark

The Complainant has rights in the mark BOEHRINGER INGELHEIM by virtue of its registered trademarks.

The Complainant clearly has trademark rights and the Complainant's trademark rights have also been confirmed by previous panels, e.g. CAC Case No. 101420 (<boehringeringelheiminc.com>); CAC Case No. 101436 (<boehringer-ingl1heim.com>) and BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546.

The Panel finds the disputed domain name is confusingly similar to the Complainant's trademarks.

As stated in BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546: "it is well-established 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" (quoting paragraph 1.10 of the WIPO Overview 2.0).

The disputed domain name incorporates the Complainant's BOEHRINGER INGELHEIM marks in its entirety. The only difference between the disputed domain name and the Complainant's BOEHRINGER INGELHEIM trademark is the additional use of the letter "a" instead of "e" ("boahringer" instead of "BOEHRINGER"), which is an obvious misspelling of the Complainant's trademark and does not change the overall impression of the trademark.

The gTLD suffix ".com" is to be generally disregarded under the confusing similarity test.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and

(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.
If the respondent fails to do so, the second element of the Policy is satisfied, see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110 and CAC Case No. 101284 (<salomontw.com>).

The Complainant states that the Respondent does not have any business relationships with the Complainant.

According to the evidence provided by the Complainant the disputed domain name is not linked with an active website.

The Panel agrees that this could not constitute legitimate, non-commercial or fair use of the disputed domain name or otherwise create rights or legitimate interests under the circumstances of the case.

Previous UDRP case law supports the view of the Complainant (see e.g. Express Scripts, Inc. v. Windgather Investments Ltd. / Mr. Cartwright, WIPO Case No. D2007-0267 and FA 918556, National Arbitration Forum, Disney Enters., Inc. v. Kamble) and the Panel

finds that the Complainant has provided sufficient prima facie evidence of the Respondent's lack of rights or legitimate interests in the Disputed domain name.

The Respondent failed to respond.

The Panel, therefore, finds that the Complainant has shown a prima facie case that has not been rebutted by the Respondent and, therefore, satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

The Panel finds that the evidence submitted by the Complainant supports a finding of bad faith under paragraph 4(b)(iv) of the Policy, because the registration of the disputed domain name which contains obvious misspelling of the Complainant's trademark and which is virtually identical to the Complainant's domain name constitutes registration and use bad faith (see, Go Daddy Software, Inc. v. Daniel Hadani, WIPO Case No. D2002-0568 (where the panel found that typosquatting is virtually per se registration and use in bad faith)" – see BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546).

The Panel finds that given the distinctiveness of the Complainant's trademarks and business name, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks and with the clear intention of taking advantage of the Complainant's marks and reputation.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Jan Schnedler**

DATE OF PANEL DECISION 2023-12-28

Publish the Decision