Decision for dispute CAC-UDRP-106627

Case number	CAC-UDRP-106627
Time of filing	2024-06-19 10:34:30
Domain names	boehringer-ingelsheim.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	Elroy Hemmings

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

According to the evidence submitted by Complainant, Complainant is the owner of international trademark nr. 221544 BOEHRINGER-INGELHEIM registered on 2 July 1995.

FACTUAL BACKGROUND

According to the information provided by the registrar the disputed domain name <boehringer-ingelsheim.com> was registered on 17 June 2024.

According to the information provided by Complainant the disputed domain name does not resolve to an active website. In addition MX records have been set up.

PARTIES CONTENTIONS

Complainant:

According to the evidence submitted by Complainant, 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.

Complainant submits that the disputed domain name is confusingly similar to Complainant's trademark. According to Complainant this is a clear case of typosquatting, as the disputed domain name contains an obvious misspelling of Complainant's trademark, as only the letter "s" has been added to the INGELHEIM part of the trademark.

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name. Respondent is not related in any way with the business of Complainant. Complainant does not carry out any activity for, nor has any business with Respondent. Neither license nor authorization has been granted to Respondent to make any use of Complainant's trademark. According to Complainant the disputed domain name is a typosquatted version of the BOEHRINGER-INGELHEIM trademark.

The disputed domain name does not resolve to an active website but to an index page. Complainant contends that Respondent did not make any use of the disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use it. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

According to Complainant the disputed domain name is registered and is being used in bad faith. Given the distinctiveness of Complainant's trademark and its reputation, it is reasonable to infer that Respondent has registered the disputed domain name with full knowledge of Complainant's trademark. Therefore, by registering the disputed domain name with the misspelling of the trademark BOEHRINGER-INGELHEIM, Complainant can state that this was intentionally designed to be confusingly similar with Complainant's trademark.

Moreover, the disputed domain name does not resolve to an active website but to an index page. Complainant contends that 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 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. As prior 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.

Finally, the disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.

Respondent:
No administratively compliant Response has been filed.

RIGHTS

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 Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant has, to the satisfaction of the Panel, shown 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

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

In the opinion of the Panel the disputed domain name is confusingly similar to Complainant's trademark. Many UDRP decisions have found that a disputed domain name is identical or confusingly similar to a complainant's trademark where the relevant trademark is recognizable within the disputed domain name. Complainant has established that it is the owner of a trademark registration for BOEHRINGER-INGELHEIM. The disputed domain name incorporates the entirety of the well-known BOEHRINGER-INGELHEIM trademark as its distinctive element. The addition of the letter "s" in the INGELHEIM part of the trademark in the disputed domain name, is insufficient to avoid a finding of confusing similarity as the BOEHRINGER-INGELHEIM trademark remains the dominant component of the disputed domain name. The Top-Level Domain ("gTLD") ".com" in the disputed domain name may be disregarded.
The Panel notes that Complainant's registration of its trademark predates the creation date of the disputed domain name.

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademark or to register the disputed domain name incorporating its mark. Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark of Complainant. Respondent is not commonly known by the disputed domain name nor has it acquired trademark rights. Complainant has no relationship with Respondent. In the view of the Panel this case is a typical case of "typosquatting" which does not confer any rights nor interest in the disputed domain name. In addition, the non-use of a domain name does not represent a bona offering of goods or services.
Respondent did not submit any response.
Under these circumstances, the Panel finds that Respondent has no rights or legitimate interests in the disputed domain name.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. Complainant has rights in the BOEHRINGER-INGELHEIM trademark. Respondent knew or should have known that the disputed domain name included Complainant's well-known mark. The Panel notes that the disputed domain name has been registered and is being used for "typosquatting" purposes.
The Panel also notes the undisputed submission of Complainant that the disputed domain name does not resolve to an active website but to an index page. It is well established that non-use of a domain name does not prevent a finding of bad faith use under the doctrine of passive holding (see section 3.3. of the WIPO Overview 3.0). The undisputed submission that there are several active MX records connected to the disputed domain name, suggests that it is unlikely that Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.
The Panel finally notes that the disputed domain name incorporates Complainant's well-known trademark in its entirety, which indicates, in the circumstances of this case, that Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, which constitutes registration and use 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-ingelsheim.com**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2024-07-15

Publish the Decision