Decision for dispute CAC-UDRP-106853

Case number	CAC-UDRP-106853
Time of filing	2024-09-11 13:16:19
Domain names	boehringers-ingelhelms.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	Erik Schnaser

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 is the owner of a large portfolio of trademarks consisting of, or including, the words "Boehringer Ingelheim", among which BOEHRINGER INGELHEIM, international registration No. 221544, registered on July 2, 1959, for goods and services in classes 01, 02, 03, 04, 05, 06, 16, 17, 19, 29, 30 and 32.

The Complainant is also the owner of the domain name <boehringer-ingelheim.com>, registered on September 1, 1995, and used to resolve to the Complainant's official website.

FACTUAL BACKGROUND

The Complainant is a German family-owned pharmaceutical group of companies founded in 1885 by Mr. Albert Boehringer in Ingelheim am Rhein. The Complainant employs around 53,500 people worldwide and operates in two business areas, "human pharma" and "animal health". In 2023, the Complainant realized net sales for Euros 25.6 billions.

The disputed domain name was registered on September 4, 2024 and resolves to a parking page of the hosting provider. The Respondent has set up Mail exchange ("MX records") for the disputed domain name.

PARTIES CONTENTIONS

The Complainant contends that the disputed domain name is confusingly similar to its BOEHRINGER INGELHEIM mark. The substitution of the letter "i" with the letter "l" in the word "ingelhelms" and the addition of the letter "s" at the end of this word are obvious misspellings of the Complainant's mark and are typical of a typosquatting practice intended to create confusion.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent does not appear to be commonly known by the disputed domain name. The name of the Respondent does not coincide with the disputed domain name. The Respondent is not related tothe Complainant, and the Complainant does not carry out any activity for, nor has any business with the Respondent. The Complainant did not authorize the Respondent to make use of its BOEHRINGER INGELHEIM mark, including as part of the disputed domain name. The disputed domain name is a typosquatting of the Complainant's mark and, as such, is evidence of the Respondent's lacks of rights or legitimate interests. The disputed domain name resolves to a parking page; thus, the Respondent is not using the disputed domain name since its registration and there are no demonstrable plans to start using it.

Finally, the Complainant contends that the Respondent registered and is being using the disputed domain name in bad faith. Given the distinctiveness and reputation of the Complainant's mark, and the nature of the disputed domain name, which is a typosquatting of the Complainant's mark, it is reasonable to infer that the Respondent was aware of the Complainant's mark at the time of the registration of the disputed domain name.

The disputed domain name resolves to a parking page. Accordingly, the Respondent has not demonstrated any activity of the disputed domain name, and it is not possible to conceive any plausible actual or contemplated active use of the disputed domain name that would not be illegitimate. Finally, the disputed domain name has been set up with MX records, which suggests that it may be actively used for communication purposes. Such circumstance 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.

The Respondent did not file a Response and did not reply to the Complainant's contentions.

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

I. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant's BOEHRINGER INGELHEIM mark. The disputed domain name reproduces the Complainant's mark with some minor misspellings: (i) the addition of a letter "s" at the end of the word "boehringer"; (ii) the replacement of the second letter "i", in the word "ingelheim", with a letter "l", and (iii) the addition of a letter "s" at the end of this word. Moreover, the disputed domain name contains a hyphen, separating the words "boehringers" and "ingelhelms". 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. Examples of such typos include (i)

substitution of similar-appearing characters (e.g., upper vs lower-case letters), (ii) the use of different letters that appear similar in different fonts, etc. This is due to the fact that the Complainant's mark remains clearly recognizable within the disputed domain name, despite its minor differences (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"). The hyphen between the two components of the disputed domain name does not affect the confusing similarity of the disputed domain name with the Complainant´s mark.

Accordingly, the Panel is satisfied that the first condition under the Policy is satisfied.

II. Respondent's lack of rights or legitimate interests

In assessing the Respondent's lack of rights or legitimate interests in the disputed domain name, the Panel must take into account that proving a negative fact for the Complainant is a difficult, if not almost impossible task. For this reason, it is generally accepted in UDRP proceedings that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names to shift the burden of proof to the Respondent.

The Panel notes that the Respondent is not related to the Complainant. The Complainant never authorized the Respondent to make use of the Complainant's mark, or of a name confusingly similar to the Complainant's mark, in any manner whatsoever, including as part of the disputed domain name. Moreover, the Respondent does not appear to be commonly known by the disputed domain name. The Respondent did not provide any evidence supporting a use of, or demonstrable preparations to use the, disputed domain name in connection with a bona fide offering of goods or services. The disputed domain name resolves to a parking page of its hosting provider. Accordingly, the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, nor in connection with a noncommercial or fair use.

In light of the foregoing, the Panel is satisfied that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. As the Respondent failed to submit a Response, it failed to rebut the Complainant's arguments and to prove its rights or legitimate interests.

Accordingly, the Panel finds that the Complainant has accomplished the second requirement under the Policy.

III. Bad Faith

The Complainant maintains that its BOEHRINGER INGELHEIM trademark is distinctive and enjoys reputation. The Panel notes that the first component of the Complainant's mark coincides with the surname of its founder and that the second component coincides with the town where the Complainant has its legal seat. Accordingly, there is a tight link between the Complainant and its mark, which is uniquely associated with the Complainant. Moreover, the reputation of the BOEHRINGER INGELHEIM mark has been recognized in various prior UDRP cases (see, among others, CAC-UDRP-106757, Boehringer Ingelheim Pharma GmbH & Co.KG vs. Yating, for the domain name < boehringer-co.com>; CAC-UDRP-106822, Boehringer Ingelheim Pharma GmbH & Co.KG vs. Joel Sanchez (Search light) for the domain name <boehringer-ingelheimfrance.com>; CAC-UDRP-106128, Boehringer Ingelheim Pharma GmbH & Co.KG vs. Zarnab Saleem, for the domain name <boehringer-ingelhoim.com>), and the disputed domain name contains a hyphen separating its two components "boehringers" and "ingelhelms" and is registered under the generic Top-Level Domain (“gTLD”) “.com”, rendering the disputed domain name almost identical to the Complainant's official domain name <boehringer-ingelheim.com>.

In light of the strong connection of the BOEHRINGER INGELHEIM mark with the Complainant, and the reputation of this mark, and given that the disputed domain name consists of a typosquatting of the Complainant's mark and is almost identical to its official domain name, it is inconceivable that the Respondent registered the disputed domain name without knowledge of the Complainant and its mark and domain name. The registration of a domain name confusingly similar to a third party's well-known trademark without rights or legitimate interests, amounts to registration in bad faith.

As far as use in bad faith is concerned, the Panel notes that the disputed domain name resolves to a parking page of the hosting provider. In this case, the totality of the circumstances suggest that the Respondent is using the disputed domain name in bad faith. The Complainant's mark enjoys strong reputation, the disputed domain name is a misspelling of the Complainant's mark and domain name, the Respondent did not file a Response and failed to provide evidence of actual or contemplated good-faith use of the disputed domain name, and any good faith use of the disputed domain name would be implausible. Moreover, the Respondent has set up MX records for the disputed domain name, which entails that the same could be used for sending deceptive emails to mislead Internet users looking for the Complainant.

For all the reasons mentioned above, the Panel finds that the Complainant has satisfied the third and last condition under the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **boehringers-ingelhelms.com**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2024-10-18

Publish the Decision