Decision for dispute CAC-UDRP-107706

Case number	CAC-UDRP-107706
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Domain names	boehringer-ingelheim.cam

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	eric fab

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 INGELHEIM” in several countries, including:

the international trademark BOEHRINGER INGELHEIM -INGELHEIM n°221544, registered since July 2, 1959;

the international trademark BOEHRINGER INGELHEIM INGELHEIM n°568844 registered since March 22, 1991.

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 INGELHEIM (1861-1939) in Ingelheim am Rhein. Ever since, BOEHRINGER INGELHEIM INGELHEIM has become a global research-driven pharmaceutical enterprise and has around 54,500 employees. It is divided into two business areas: Human Pharma and Animal Health. In 2024, BOEHRINGER INGELHEIM INGELHEIM achieved net sales of 26,796 billion euros.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant states that the disputed domain name <boehringer-ingelheim.cam> is confusingly similar to its trademark BOEHRINGER INGELHEIM -INGELHEIM and its domain names associated. The obvious misspelling of the Complainant's trademark BOEHRINGER INGELHEIM -INGELHEIM, i.e. the substitution of the letter "G" by the letter "Q", is characteristic of 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 does not prevent a domain name from being confusing similar to the Complainant's trademark.

Furthermore, the Complainant contends that the addition of the new gTLD ".CAM" 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.

It also states that the disputed domain name has been set up with MX records which suggests that it may be actively used for e-mail purposes. The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

RESPONDENT:

The Respondent has not appeared formally or informally to controvert the evidence submitted by the Complainant.

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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Pursuant to Paragraph 4(a) of the Policy the Complainant is required to prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations and adduced proof pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint and annexes as true unless the evidence is clearly contradictory. See Talk City,

Inc. v. Robertson, D2000-0009 (WIPO February 29, 2000) (In the absence of a response the Panel “is left to render its decision on the basis of the uncontroverted contentions made, and the evidence supplied, by complainant.”).

1. Identical or confusingly similar, paragraph 4(a)(i) of the Policy.

To succeed under the first element, a complainant must pass a two-part test, to establish first that it has rights, and thereafter that the disputed domain name is either identical or confusingly similar to the mark. The first element of a UDRP complaint “serves essentially as a standing requirement.” See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“WIPO Overview 3.0”), section 1.7.

Here, the Complainant has established that it has rights in the word mark BOEHRINGER INGELHEIM by providing the Panel with the evidence that it has registered trademarks in many international jurisdictions. The consensus view which the Panel adopts is that a national or an international trademark registration is sufficient to establish rights in that mark. As such, the Panel finds that the Complainant has established that it has a right in the word mark BOEHRINGER INGELHEIM.

The second part of the test calls for comparing the Complainant’s mark with the disputed domain name. It entails “a straightforward visual or aural comparison of the trademark with the alphanumeric string in the domain name. 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." WIPO Overview 3.0 at section 1.8. The dominant feature is the Complainant's mark BOEHRINGER INGELHEIM.

That the relevant trademark is recognizable within the disputed domain name is sufficient to establish confusing similarity. In this case, the Respondent misspells BOEHRINGER by substituting a “Q” for a “G”. The substitution of one letter in a highly distinctive mark highlights rather than diminishes the confusing similarity of domain name to mark. See WIPO Overview 3.0 section 1.9: “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”.

The addition of the new gTLD ".cam" does not have any impact on the overall impression of the dominant portion of the disputed domain name and is therefore irrelevant in determining the confusing similarity with BOEHRINGER INGELHEIM. See A&S Holdings (AUS) Pty Ltd v. Sam Nelson, Sam Nelson, WIPO Case No. D2025-0720 (A “generic Top-Level Domain ('gTLD') is viewed as a standard registration requirement and is generally disregarded under the first element of the confusing similarity test, as set forth in section 1.11.1 of WIPO Overview 3.0.’).

The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. Accordingly, the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

2. Rights and legitimate interests, paragraph 4(a)(ii) of the Policy.

To establish the second of the three elements, the Complainant must first demonstrate that the Respondent lacks rights and legitimate interests in the disputed domain name. Recognizing that the proof for establishing this element is under the Respondent's control, the Complainant's may satisfy this burden by offering a prima facie case based on such evidence as there is thus shifting the burden of persuasion to the Respondent to produce evidence sufficient to overcome the presumption that it lacks rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it did not authorize the Respondent to register the disputed domain name, the Respondent is not using the domain name for any bona fide use, and it cannot claim to be known by the name "BOEHRINGER INGELHEIM " as it has been identified in the Whois directory as eric fab. See Emerson Electric Co. v. golden humble /golden globals, FA 1787128 (Forum June 11, 2018) ("lack of evidence in the record to indicate a respondent is authorized to use [the] complainant's mark may support a finding that [the] respondent does not have rights or legitimate interests in the disputed domain name per Policy ¶ 4(c)(ii)").

The Complainant has also demonstrated that the Respondent is not using the disputed domain name for any non-commercial or fair use. See Croatia Airlines d. d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 (Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP). See also Advanced International Marketing Corporation v. AA-1 Corp, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii).

Here, the Complainant has satisfied the Panel that it has set forth a prima facie case and the burden thereupon shifts to the Respondent. The Policy sets forth the following nonexclusive list of factors any one of which, if proved, would satisfy Respondent’s burden, but the absence of any evidence supports a complainant's contention that the respondent lacks rights or legitimate interests in the disputed domain name.:

(i) "[B]efore any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services."
(ii) "[Y]ou (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights."
(iii) "[Y]ou are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

Here, the disputed domain name is virtually identical to the Complainant's mark. The sole difference is the substitution of “G” for a

“Q”. The failure of a party to submit evidence on facts in its possession and under its control may permit the Panel to draw an adverse inference regarding those facts. See Mary-Lynn Mondich and American Vintage Wine Biscuits, Inc. v. Shane Brown, doing business as Big Daddy's Antiques, WIPO Case No. D2000-0004. See also The Hackett Group, Inc. v. Brian Herns / The Hackett Group, Forum Case No. 1597465, (“The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy ¶ 4(a)(ii).”).

As the Respondent has not controverted the evidence that it lacks right or legitimate interests in the disputed domain name, and there is no other evidence from which to draw an inference otherwise, the Panel finds that the Complainant has satisfied Paragraph 4(a)(ii) of the Policy.

3. Registration and Use in Bad faith:

It is the Complainant's burden under Paragraph 4(a)(iii) of the Policy to prove that the Respondent both registered and is using the disputed domain name in bad faith. It is not sufficient for a complainant to rest its case on the finding under Paragraph 4(a)(ii) of the Policy, although the fact that the Respondent lacks rights or legitimate interests in the disputed domain name will be a factor in assessing its motivation for registering a domain name that is virtually identical to the Complainant's mark.

The Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. The preamble to Paragraph 4(b) states: "For the purposes of Paragraph 4(a)(iii) [the finding of any of the circumstances] shall be evidence of the registration [...] of a domain name in bad faith":

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant's proof in this case focuses the Panel's attention on the fourth factor. As there is no proof that would support the other factors, the Panel will not address them. Complainant contends that the Respondent has targeted the Complainant's mark for the purpose of taking advantage of its goodwill and reputation to attract Internet users to its website. This conduct "creat[es] a likelihood of confusion [...] as to the source, sponsorship, affiliation, or endorsement of [its] website".

In the absence of a response by a respondent to justify its registration and use of a domain name corresponding to a famous or well-known mark, a panel is compelled to examine the limited record for any exonerative evidence of good faith. Here, the Panel finds none. The Respondent has appropriated a well-known, indeed in its niche, a famous mark to serve an infringing purpose. See Royal Bank of Canada - Banque Royale Du Canada v. Registration Private, Domains By Proxy, LLC / Randy Cass, WIPO Claim No, D2019-2803 the Panel noted: "It is clear that where the facts of the case establish that the respondent's intent in registering or acquiring a domain name was to unfairly capitalize on the complainant's [...] trademark, panels have been prepared to find the respondent acted in bad faith."

What is material here is that the Respondent has registered and is using the disputed domain name adversely to the Complainant's statutory rights and giving consumers a clear impression that it is a website sponsored by the Complainant. As the domain name could not conceivably be used without infringing on those rights, its registration was also in bad faith. See Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Claim No. D2000-0003. The Panel in Singapore Airlines Ltd. v. European Travel Network, WIPO Claim No. D2000-0641 held that "[t]he registration of domain names obviously relating to the Complainant is a major pointer to the Respondent's bad faith and desire to 'cash in' on the Complainant's reputation."). See also Justice for Children v. R neetso / Robert W. O'Steen, WIPO Case No. D2004-0175 (holding that "harm results from the confusion caused by the initial attraction to the site by means of borrowing complainant's mark. And that is exactly the harm the Policy was adopted to address.").

Further, the substitution of letters “appears calculated to trade on Complainant’s name by exploiting likely mistake by users when entering the url address,” Oxygen Media, LLC v. Primary Source, WIP0 Claim No. D2000-0362. Also, Estee Lauder Inc. v. estelauder.com, estelauder.net and Jeff Hanna, WIPO Claim No. D2000-0869 the Respondent simply omitted the final ‘e’ from ‘Estee’ to create the domain name <estelauder.com>.

The Complainant has also raised concerns about the Respondent having an MX record and the possibility of its using it to for unlawful purposes. However, as the Complainant adduces no proof that it has been directed for those purposes, it is necessary only to underscore that these MX records represent an implied ongoing threat to the Complainant and Internet users that such phishing may be conducted. See Progress Rail Services Corporation v. Michelle Loren, FA2504002148605 (Forum May 2, 2025) (“While, in the abstract, the creation of such records does not indicate any ill intent, against the backdrop of the present case where a domain name that is a typosquatted version of the Complainant's well-known trademark has been created by the Respondent, this MX record does require some further explanation which the Respondent has not provided.“).

For these reasons, the Panel finds that the Respondent is using the disputed domain name 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-ingelheim.cam**: Transferred

PANELLISTS

Name	**Gerald Levine Ph.D, Esq.**

DATE OF PANEL DECISION 2025-07-28

Publish the Decision