

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim Pharma GmbH & CO.KG. v. Mike John
Case No. D2023-1681

1. The Parties

The Complainant is Boehringer Ingelheim Pharma GmbH & CO.KG., Germany, represented by Nameshield, France.

The Respondent is Mike John, Germany.

2. The Domain Name and Registrar

The disputed domain name <boehringer-ingelheim.website> is registered with Cronon GmbH (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 17, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 24, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 24, 2023.

The Center sent an email communication in English and German to the parties on April 24, 2023, regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is German. The Complainant sent an email to the Center requesting English to be the language of the proceeding on April 24, 2023. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 23, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on May 30, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is an internationally active pharmaceutical company with its registered seat in Germany. Its roots date back to the year 1885.

The Complainant is owner of the widely-known BOEHRINGER INGELHEIM trademark, which is registered in a large number of jurisdictions, including in Germany, where the Respondent is reportedly located. For instance, the Complainant is the owner of the International Trademark Registration No. 568844, registered on March 22, 1991, covering protection for a large variety of goods as protected in classes 1, 2, 3, 4, 5, 9, 10, 16, 30 and 31 (Annex 4 to the Complaint).

The Complainant further owns and operates numerous domain names comprising its BOEHRINGER INGELHEIM trademark, such as <boehringer-ingelheim.com>, which was registered in 1995 (Annex 5 to the Complaint).

The disputed domain name was registered on April 6, 2023.

The disputed domain name resolves to a general landing page of a host provider indicating that no content has been uploaded so far (Annex 6 to the Complaint). Additionally, an active mail exchange ("MX") email server for the disputed domain name has been configured (Annex 7 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is identical to its BOEHRINGER INGELHEIM trademark.

The Complainant further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

6.1. Preliminary Issue: Language of the Proceeding

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the Registration Agreement of the disputed domain name is German, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceeding in German and to request a German translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center's communication about the language of the proceeding, even though communicated in German and English. The Panel notes that the Respondent was further given the opportunity to respond in German and that this opportunity also remained unused by the Respondent.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

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

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant is the owner of the BOEHRINGER INGELHEIM trademark, which is widely known and registered in various jurisdictions (Annex 4 to the Complaint).

The Panel finds that, except the hyphen, the disputed domain name is identical to the Complainant's BOEHRINGER INGELHEIM trademark as it incorporates the Complainant's trademark in its entirety without any further additions or amendments.

In this regard, the Panel notes that the generic Top-Level Domain (".website" in this case) may, as a general principle, be disregarded when assessing identity or confusing similarity between a domain name and a trademark, see [WIPO Overview 3.0](#), section 1.11.1.

In view of the finding above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production of evidence shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's BOEHRINGER INGELHEIM trademark within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name, not least because the disputed domain name apparently has yet not been actively used by the Respondent. In the absence of a Response to the Complainant's contentions, the Respondent has also failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or other evidence of rights or legitimate interests in the disputed domain name. Rather, the Panel notes that the disputed domain name is identical, except for the hyphen, to the Complainant's widely known BOEHRINGER INGELHEIM trademark, and hence, causes a risk of implied affiliation.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel is convinced that the Respondent was aware of the Complainant's widely-known BOEHRINGER INGELHEIM trademark when registering the disputed domain name recently in April 2023. At the date of registration, the Complainant's BOEHRINGER INGELHEIM trademark was already registered, used, and widely known. UDRP panels have consistently found that the registration of a domain name that is identical to a famous or widely-known trademark by an unaffiliated person or entity can by itself create a presumption of bad faith, see [WIPO Overview 3.0](#), section 3.1.4. Consequently, the Panel has no doubt that the Respondent has registered the disputed domain name in bad faith.

With respect to the use of the disputed domain name in bad faith, as already indicated before, the disputed domain name has yet only been linked to a general landing page of a host provider indicating that no content has been uploaded so far. Nonetheless, and in line with the previous UDRP decisions (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)) and section 3.3 of the [WIPO Overview 3.0](#), the Panel believes that the non-use of a domain name does not prevent a finding of bad faith use.

Applying the passive holding doctrine as summarized in section 3.3 of the [WIPO Overview 3.0](#), the Panel assesses the Complainant's widely-known trademark BOEHRINGER INGELHEIM as sufficiently distinctive, so that any good-faith use of the Complainant's trademark in the inherently misleading disputed domain name by the Respondent appears to be inconceivable, except with an authorization of the Complainant. Particularly, as the disputed domain name is identical, except for the hyphen, to the Complainant's widely known BOEHRINGER INGELHEIM trademark, the Panel is of the opinion that any active website linked to

the disputed domain name would likely cause the false impression that it is operated or at least endorsed or authorized by the Complainant.

Furthermore, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith. In addition, the Panel believes that the configured MX email server for the disputed domain name creates a real or implied ongoing threat to the Complainant, since the disputed domain name, even if not associated to an active website, may be used by the Respondent to mislead customers looking for the Complainant in their false belief that any email sent from the disputed domain name originates from the Complainant, possibly for fraudulent activities.

Taking all circumstances of this case into consideration, the Panel finds that in the present case the passive holding of the disputed domain name sufficiently indicates bad faith use by the Respondent.

Consequently, the Panel is convinced that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has also satisfied the third element of the Policy, namely, paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <boehringer-ingelheim.website> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: June 13, 2023