

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim Pharma GmbH & Co.KG. v. 张雪松 (zhang xue song)
Case No. D2024-0356

1. The Parties

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

The Respondent is 张雪松 (zhang xue song), China.

2. The Domain Name and Registrar

The disputed domain name <boehringser-ingelheim.com> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 26, 2024. On January 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 29, 2024, 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 January 29, 2024, 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 in English on January 29, 2024.

On January 29, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On January 29, 2024, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant's submission.

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 in Chinese and English of the Complaint, and the proceedings commenced on February 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on February 29, 2024.

The Center appointed Francine Tan as the sole panelist in this matter on March 7, 2024. 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 states that it is a family-owned pharmaceutical group of companies which was founded in 1885 by Albert Boehringer in Ingelheim am Rhein, Germany. Since then, the Complainant has become a global research-driven pharmaceutical enterprise and has today over 53,000 employees. The Complainant's three business areas are Human Pharma, Animal Health and Biopharmaceutical Contract Manufacturing. In 2022, the Complainant's net sales amounted to about 24.1 billion Euros.

The Complainant states that it owns a large portfolio of trademark registrations for BOEHRINGER-INGELHEIM. and BOEHRINGER INGELHEIM including the following:

- International Registration No. 221544 for BOEHRINGER-INGELHEIM., registered on July 2, 1959; and
- International Registration No. 568844 for BOEHRINGER INGELHEIM, registered on March 22, 1991.

The Complainant owns many domain names which incorporate the said trade marks, including <boehringer-ingelheim.com>, which was registered on September 1, 1995.

The disputed domain name <boehringser-ingelheim.com> was registered on January 24, 2024, and resolves to an inactive webpage.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that:

1) The disputed domain name is confusingly similar to the BOEHRINGER-INGELHEIM trade mark in which it has rights. The disputed domain name consists of its BOEHRINGER-INGELHEIM trade mark in its entirety with the addition of the letter "s" in the first portion of the trade mark. This is characteristic of a typosquatting practice intended to create confusing similarity with the Complainant's trade mark. Such a slight spelling variation does not prevent the disputed domain name from being confusingly similar to the Complainant's BOEHRINGER-INGELHEIM trade mark.

2) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Respondent is not affiliated with or authorized by the Complainant in any way. The Complainant does not carry out any activity for, nor has it any business with the Respondent. The Complainant has never granted any licence or authorized the Respondent to use the BOEHRINGER-INGELHEIM trade mark or to register the disputed domain name. The typosquatted nature of the disputed domain name is evidence that the Respondent intended to take advantage of Internet users' typographical errors when searching for the Complainant's webpage.

The disputed domain name does not lead to an active webpage, which is evidence that the Respondent has no demonstrable plans to use the disputed domain name.

3) The domain name was registered and is being used in bad faith. Given the distinctiveness and reputation of the Complainant's trade mark, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trade mark, all the more so with the deliberate misspelling. The incorporation of a famous mark in a domain name can be evidence of bad faith registration and use even if it resolves to an inactive webpage. The fact that the MX records of the disputed domain name are set up, suggests that it may be used for sending emails.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural issue - Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainant requested that the language of the proceeding be English for several reasons, namely:

- 1) English is the language most widely used in international relations and is one of the working languages of the Center;
- 2) the disputed domain name consists of words in the Latin alphabet and not in Chinese characters;
- 3) requiring the Complainant to engage specialized translation services would lead to a cost likely to be much higher than the overall cost of the administrative proceeding. This would impose an undue burden on the Complainant which must be deemed significant in view of the low cost of this proceeding;
- 4) the Respondent was notified by the Center of the Complaint in Chinese and the Respondent was therefore afforded the opportunity to respond in Chinese.

The Respondent did not respond to the Center on the issue of the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English. It would not be expedient for the proceeding to be delayed nor for the additional translation expenses to be incurred by the Complainant in the circumstances of this case. The Respondent was afforded the opportunity to address this issue but chose not to, and there is no reason for the Panel to believe that the Respondent did not reasonably understand the nature of the proceeding.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trade mark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown it has rights in respect of the trade mark BOEHRINGER-INGELHEIM for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. The addition of the letter "s" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trade mark for the purposes of the Policy. The Complainant's trade mark BOEHRINGER-INGELHEIM is recognizable in the disputed domain name and the Panel agrees that this is a clear case of typosquatting. [WIPO Overview 3.0](#), section 1.9.

Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie case with any evidence demonstrating that he has rights or legitimate interests in the disputed domain name. The Respondent was not licensed or authorized by the Complainant to use the latter's BOEHRINGER-INGELHEIM trade mark or to register a domain name incorporating the trade mark. The disputed domain name resolves to an inactive webpage, and there is no evidence that the Respondent is using or preparing to use it for any legitimate noncommercial or fair use, without intent for commercial gain. Further, the fact that the Respondent did not file any response in this proceeding is indicative that he does not have any rights or legitimate interests in the disputed domain name. In any event, the Complainant's BOEHRINGER-INGELHEIM trade mark is distinctive, and associated exclusively with the Complainant. Accordingly, it is not at all conceivable that the Respondent would be able to demonstrate that he has rights or legitimate interests in the disputed domain name.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The disputed domain name incorporates the entirety of the Complainant's distinctive BOEHRINGER-INGELHEIM trade mark with the addition of the letter "s". The Complainant's BOEHRINGER-INGELHEIM mark has been registered for many years. Given that length of time of registration and the distinctiveness of the Complainant's BOEHRINGER-INGELHEIM mark, the Panel finds that the Respondent more likely than not, would have known of the Complainant and its BOEHRINGER-INGELHEIM mark at the time he registered the disputed domain name. Further, the addition of the letter "s" in the disputed domain name (taking into account the fact that the letter "s" on a QWERTY keyboard is adjacent to the letter "e") was clearly a deliberate attempt to capitalize on the likely typographical mistake that Internet users would make when searching for the Complainant's website. The fact that the MX records of the disputed domain name have been set up suggests that the Respondent may attempt to impersonate the Complainant or to use the email for phishing or other fraudulent purposes.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, and (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use. [WIPO Overview 3.0](#), section 3.3. The Panel notes the distinctiveness and reputation of the Complainant's trade mark, and the composition of the disputed domain name, and is persuaded in the circumstances of this case that the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

The Panel also draws an adverse inference from the fact that the Respondent's registered address was incomplete or false and as a result, the Written Notice documents from the Center could not be successfully delivered to the Respondent.

The Panel finds that the Complainant has established the third element 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 <boehringser-ingelheim.com> be transferred to the Complainant.

/Francine Tan/

Francine Tan

Sole Panelist

Date: March 21, 2024