

ADMINISTRATIVE PANEL DECISION

Boehringer Ingelheim Pharma GmbH & Co.KG v. 刘海斌 (liu hai bin)
Case No. D2024-2964

1. The Parties

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

The Respondent is 刘海斌 (liu hai bin), China.

2. The Domain Name and Registrar

The disputed domain name <email-boehringeringelheim.com> is registered with Xin Net Technology Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on July 22, 2024. On July 22, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 23, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 24, 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 July 24, 2024.

On July 24, 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 July 24, 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 English and Chinese of the Complaint, and the proceedings commenced on July 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 20, 2024.

The Center appointed Hong Yang as the sole panelist in this matter on August 22, 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 is a pharmaceutical group of companies with roots going back to 1885. It has become a global research-driven pharmaceutical enterprise with 53,500 employees. Since 1994, the Complainant has operated in China where the Respondent is reportedly located, currently employing 4,000 individuals in the country. The Complainant's business covers two areas of human pharma and animal health. In 2023, net sales of the Complainant amounted to about EUR 25.6 billion.

The Complainant owns a portfolio of trademarks containing the wording "Boehringer Ingelheim" covering multiple jurisdictions, including the following: International Trademark Registration No. 221544 for BOEHRINGER-INGELHEIM., registered on July 2, 1959, and International Trademark Registration No. 568844 for BOEHRINGER INGELHEIM, registered on March 22, 1991, designating several jurisdictions including China.

The Complainant also owns multiple domain names consisting of the mark BOEHRINGER INGELHEIM, including <boehringer-ingelheim.com> registered since September 1, 1995.

The disputed domain name <email-boehringeringelheim.com> was registered on March 13, 2024. According to the evidence provided by the Complainant, at the time of filing of this Complaint, the disputed domain name resolved to an inactive page. Besides, mail exchanger ("MX") servers are configured for the disputed domain name.

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.

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 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, including the fact that: (1) English is widely used internationally and a working language of the Center; (2) the disputed domain name is formed by words in Roman characters and not in Chinese script; (3) the use of Chinese would impose a burden of higher costs on the Complainant.

The Respondent had, moreover, been notified by the Center, in both Chinese and English, of the language of the proceeding, and the deadline for filing a Response in Chinese or English. The Respondent did not make any specific submissions with respect to the language of the proceeding nor did the Respondent file any Response.

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.

6.2 Substantive Issues

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term, "email" with a hyphen, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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 showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel notes that the composition of the disputed domain name itself carries a risk of implied affiliation, where the disputed domain name consists of the Complainant's mark plus the term "email" and a hyphen. Available record shows that the Respondent was not affiliated or otherwise authorized by the Complainant or held any registration of the BOEHRINGER INGELHEIM mark anywhere. There is no evidence indicating that the Respondent might be commonly known by the disputed domain name. Particularly, the additional term "email" tends to suggest sponsorship or endorsement by the Complainant, as Internet users are likely to consider that the disputed domain name is the Complainant's specific domain name for emails. Where a domain name consists of a trademark plus an additional term, panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

The disputed domain name resolves to an inactive page, showing that the Respondent did not make any use of or have made any demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, neither did the Respondent make any legitimate noncommercial or fair use of the disputed domain name. It corroborates that the Respondent has no 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.

In the present case, the Panel notes that the Respondent has used, without any license or authorization the Complainant's trademark, in the disputed domain name plus the term "email". The Complainant's trademark BOEHRINGER INGELHEIM is globally well known and the Complainant's registration and use of its mark much predates the Respondent's registration of the disputed domain name, so the Respondent knew or should have known of the Complainant's mark at the time of registering the disputed domain name. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4 There is a clear absence of the Respondent's rights or legitimate interests in the disputed domain name as discussed under the section 6.2.B of the decision, coupled with the Respondent's failure to submit a response with any credible explanation for the Respondent's choice of the disputed domain name. This, combined with the nature of the disputed domain name, also indicates that the Respondent's registration targets the Complainant, which constitutes bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

At the time of filing of the Complaint, the disputed domain name resolved to an inactive page. Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, the composition of the disputed domain name, and the Respondent's failure to submit a response, and finds that

in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Further, available record shows that MX records have been configured by the Respondent in connection with the disputed domain name. Considering the composition of the disputed domain name, the Panel is convinced that the Respondent has the possible intention to use the disputed domain name and relevant email addresses to conduct potentially fraudulent activities.

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 <email-boehringerengelheim.com> be transferred to the Complainant.

/Hong Yang/

Hong Yang

Sole Panelist

Date: September 5, 2024