

Decision for dispute CAC-UDRP-105059

Case number	CAC-UDRP-105059
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Time of filing	2022-12-16 09:17:31
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Domain names	boehringermeso.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Boehringer Ingelheim Pharma GmbH & Co.KG
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Eve ly
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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

Among others, the Complainant is the owner of the following International Registered Trademark:

BOEHRINGER, word mark, registered on December 2, 2002 under number 799761 in use classes 1, 3, 5, 10, 16, 30, 31, 35, 41, 42 and 44, and designated in respect of over 60 territories.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a German family-owned pharmaceutical group of companies with roots dating back to 1885. It has around 50,000 employees, revenues of EUR 18.1 billion and specializes in human pharmaceuticals, animal health and biopharmaceuticals.

The Complainant is the owner of various registered trademarks for the BOEHRINGER word mark including international registered trademark no. 799761, registered on December 2, 2002.

The Complainant is the registrant of the domain name <boehringer.com>, registered on January 12, 2000.

The disputed domain name was registered on November 25, 2022 and resolves to a Chinese website that is not affiliated to the Complainant.

PARTIES CONTENTIONS

Complainant contains as follows:

The disputed domain name is confusingly similar to the Complainant's BOEHRINGER registered trademark, which is reproduced in its entirety. The addition of the generic term "meso" is insufficient to escape a finding of confusing similarity. The overall impression is that the disputed domain name is connected to the said mark. A dictionary word coupled with a trademark does not create a new or different right to the mark or diminish confusing similarity. The addition of the generic Top-Level Domain suffix ".com" does not change the overall impression of the designation as being connected to the Complainant's trademark. Previous cases under the Policy have confirmed the Complainant's rights.

The Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way to the Complainant. The Complainant does not carry out any activity with, nor has any business with the Respondent. Neither license nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademark or to apply for registration of the disputed domain name. The disputed domain name redirects to an unrelated website on which the Chinese content makes reference to a company named "Shenzhen Guangming District Huaili Technology Consulting Co., Ltd."

The disputed domain name is confusingly similar to and contains the Complainant's well-known mark in its entirety. Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of said mark. Given the notoriety of the BOEHRINGER registered trademark it seems impossible for the Respondent to use the disputed domain name in good faith. The disputed domain name redirects to an unrelated website. By using the disputed domain name, the Respondent has intentionally attempted to attract for commercial gain, Internet users to its website or other on-line 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 that website or location. The Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

The Panel is satisfied that the second level of the disputed domain name contains the Complainant's BOEHRINGER registered trademark in its entirety together with the word "meso", a dictionary word, usually employed in a prefix, meaning "middle" or "intermediate". The Complainant's said mark is still fully recognizable within the disputed domain name despite the addition of said

dictionary word. Said mark is the first, most distinctive, and dominant part of the disputed domain name. The generic Top-Level Domain, in this case “.com”, is typically disregarded for the purposes of the comparison exercise. In these circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent does not have rights or legitimate interests in the disputed domain name based upon its various assertions. The Complainant asserts that the Respondent is not related in any way to the Complainant, carries out no activity for, nor has any business with the Complainant, and has been granted neither license nor authorization by the Complainant to make any use of the Complainant’s trademark or to apply for registration of the disputed domain name. The Complainant provides evidence showing that the disputed domain name redirects to an unrelated website on which the Chinese content makes reference to a company named “Shenzhen Guangming District Huaili Technology Consulting Co., Ltd.” The Panel accepts the general thrust of the Complaint that such use does not disclose rights or legitimate interests within the meaning of the Policy.

The Respondent has failed to file a Response in this case and accordingly has provided no submissions or evidence which would serve to rebut the Complainant’s *prima facie* case. Accordingly, the Respondent having failed to rebut the Complainant’s *prima facie* case, and there being no facts or circumstances on the present record indicating that the Respondent may otherwise have rights or legitimate interests in the disputed domain name, the Panel finds that the Respondent has no such rights or legitimate interests therein.

In the Annexes to the Complaint, the Complainant provided WhoIs data for an unrelated domain name that is not the subject of this proceeding. However, the Panel has been able to accept the necessary data concerning the disputed domain name, normally obtained from WhoIs records, by way of the data tendered by the Registrar during the verification process. In these circumstances, the Panel accepts the Complainant’s submission that the disputed domain name was registered on November 25, 2022.

The registration of the disputed domain name long post-dates the existence of the Complainant’s trademark and reproduces this in its entirety. A previous panel under the Policy has determined that the Complainant’s trademark is both distinctive and of global repute (see: *Boehringer Ingelheim Pharma GmbH & Co. KG v. Whois Privacy Services Pty Ltd / Dzone Inc., Yeonju Hong*, WIPO Case No. D2013-0116). Equally, the Complainant itself is well-known worldwide and has been in operation for many years (see *Boehringer Ingelheim Pharma GmbH & Co. KG. v. Whoisguard Protected, Whoisguard, Inc. / J Gates, My Domain Estates*, WIPO Case No. D2015-1542). It is reasonable to infer that the Respondent must have registered the disputed domain name with knowledge of the Complainant. It is likewise reasonable to infer that the Respondent intended to target the Complainant’s rights in bad faith for its own commercial benefit.

The Respondent is using the disputed domain name to redirect to an unrelated website on which the Chinese content makes reference to a company named “Shenzhen Guangming District Huaili Technology Consulting Co., Ltd.” There is no reason apparent to the Panel as to why the disputed domain name is being used in this way other than that the notoriety of the Complainant’s trademark as reproduced in the disputed domain name (along with the dictionary prefix word “meso”) would cause the disputed domain name to benefit from increased Internet traffic generated by confused customers looking for the Complainant’s official website. Accordingly, the Panel accepts the Complainant’s submission that by using the disputed domain name, the Respondent has intentionally attempted to attract for commercial gain, Internet users to its website or other on-line 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 that website or location.

The Respondent has failed to file any Response in this proceeding, and as such has not availed itself of the opportunity to address the Complainant’s contentions or to advance a reasonable justification for its registration and use of the disputed domain name. On the basis of the present record, and in the absence of such a Response, the Panel cannot conceive of any suitable explanation which might have been tendered by the Respondent regarding its registration and use of the disputed domain name. Accordingly, the Panel finds that the disputed domain name was registered and has been used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. boehringermeso.com: Transferred

PANELLISTS

Name Andrew Lothian

DATE OF PANEL DECISION 2023-01-11

Publish the Decision