

ADMINISTRATIVE PANEL DECISION

**Boehringer Ingelheim Pharma GmbH & Co. KG v. 上海大蒙文化传播有限公司
(Shang Hai Da Meng Wen Hua Chuan Bo You Xian Gong Si)
Case No. D2023-2669**

1. The Parties

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

The Respondent is **上海大蒙文化传播有限公司 (Shang Hai Da Meng Wen Hua Chuan Bo You Xian Gong Si)**, China.

2. The Domain Name and Registrar

The disputed domain name <**boehringer-ingelheim.com**> is registered with **Chengdu West Dimension Digital Technology Co., Ltd.** (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on June 21, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 25, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Redacted for Privacy) and contact information in the Complaint. On June 26, 2023, the Center sent an email communication to the Complainant providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Complainant filed an amended Complaint in English.

On June 26, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On the same day, the Complainant submitted a request that English be the language of the proceeding. On the same day, the Respondent sent an email communication to the Complainant, copied to the Center, in which it indicated that it could not respond in English and requested that the Complainant send any further questions in Chinese. The Respondent’s email communication also addressed the merits of the dispute.

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 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2023. The Respondent did not submit any further communication besides its email to the Complainant dated June 26, 2023 that it had copied to the Center. Accordingly, the Center notified the commencement of the panel appointment process on August 1, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on August 15, 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 a global research-based pharmaceutical company. Its name derives from the surname of its founder (Albert Boehringer) and the place of its foundation (Ingelheim am Rhein). The Complainant conducts business in the areas of human pharma, animal health, and biopharmaceutical contract manufacturing. It owns multiple trademarks including the following:

- International trademark registration number 221544 for BOEHRINGER-INGELHEIM., registered on July 2, 1959, designating multiple jurisdictions, and specifying goods in multiple classes; and
- International trademark registration number 568844 for BOEHRINGER INGELHEIM, registered on March 22, 1991, designating multiple jurisdictions, including China, and specifying goods in multiple classes.

The above trademark registrations remain current. The Complainant has also registered multiple domain names including <boehringer-ingelheim.com>, registered on September 1, 1995, that it uses in connection with a website where it provides information about itself and its products.

The Respondent is a Chinese company and its contact person is 蔡璠 (Cai Jun).

The disputed domain name was registered on June 9, 2023. It does not resolve to any active website; rather, it is passively held.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's BOEHRINGER-INGELHEIM. mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with or authorized by the Complainant in any way. The Respondent is not commonly known by the disputed domain name. The disputed domain name is inactive.

The disputed domain name was registered and is being used in bad faith. Given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark. By registering the disputed domain name with the misspelling of the Complainant's trademark, the disputed domain name was intentionally designed to be confusingly similar with the Complainant's trademark.

B. Respondent

The Respondent did not submit a formal Response but replied to the Complainant's contentions in an informal email that it copied to the Center. It mainly argues as follows: it complies with the law, it legally

registered the disputed domain name and it legally operates its business. It is a non-profit company dedicated to developing education and cultural exchanges in poor areas of China. It does not promote the disputed domain name anywhere, nor does it use the disputed domain name commercially.

6. Discussion and Findings

6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain name is in Latin script, not Chinese characters, and that translation of the Complaint would impose a significant cost on the Complainant.

The Respondent submits that English is not an official language in China, and that it is difficult for it to respond to the Complaint in English although it can roughly understand the Complaint by using an online translation tool. It asked the Complainant to send any further questions in Chinese.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended Complaint were filed in English whereas the Respondent's informal email communication is in Chinese. Both Parties have taken the opportunity to present their respective cases. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting both Parties' communications in their original language does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English but that the Panel will accept the Respondent's informal email communication in Chinese, without translation.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark 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.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the BOEHRINGER-INGELHEIM. mark.

The disputed domain name incorporates the BOEHRINGER-INGELHEIM. mark (including the hyphen), omitting only the dot and adding an “n” before the “m”. This spelling error is so subtle that the mark remains

clearly recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.9.

The only additional element in the disputed domain name is a generic Top-Level Domain (“gTLD”) extension (“.com”). As a standard requirement of domain name registration, this element may be disregarded in the comparison between the disputed domain name and the BOEHRINGER-INGELHEIM. mark. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a mark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent has] acquired no trademark or service mark rights; or
- (iii) [the Respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances above, the disputed domain name does not resolve to any active website. The Complainant submits that the Respondent is not affiliated with it or authorized by it in any way.

The Panel considers that these circumstances indicate that the Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, nor making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance above, the Registrar has verified that the Respondent’s name is “上海大蒙文化传播有限公司 (Shang Hai Da Meng Wen Hua Chuan Bo You Xian Gong Si)” which may be translated as “Shanghai Dameng Culture Communication Co., Ltd”, not the disputed domain name. The Respondent’s contact person is named “蔡鋆 (Cai Jun)” and his email username is “Joe Cai”. Nothing in the record indicates that the Respondent is commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent’s arguments, it submits that it complies with the law and legally registered the disputed domain name. However, the mere registration of a domain name does not create rights or legitimate interests for the purposes of the Policy, otherwise no Complaint could ever succeed, which would be an illogical result. See, for example, *Pharmacia & Upjohn Company v. Moreonline*, WIPO Case No. [D2000-0134](#). The Respondent asserts that it legally operates its business, that it is a non-profit company dedicated to developing education and cultural exchanges in poor areas of China, and that it does not use the disputed domain name commercially. However, it does not attempt to substantiate any of these assertions or demonstrate that it has made any preparations to use the disputed domain name in connection with these alleged activities. In any event, it offers no explanation as to why the disputed domain name is so similar to the Complainant’s mark and what connection it has to any of these alleged activities. Accordingly, the Respondent has failed to rebut the Complainant’s *prima facie* case.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith but these circumstances are not exhaustive.

With respect to registration, the disputed domain name was registered in 2023, years after the registration of the Complainant's BOEHRINGER-INGELHEIM. trademark. BOEHRINGER-INGELHEIM. is a combination of a surname and a place name with no meaning other than as a reference to the Complainant and its products. Save for the dot in the BOEHRINGER-INGELHEIM. mark, the disputed domain name wholly incorporates the BOEHRINGER-INGELHEIM. trademark with a subtle spelling error (*i.e.*, the insertion of an "n" before the "m") and has no apparent meaning other than as an approximation of the Complainant's mark and domain name. The Respondent offers no explanation as to why it chose to register a misspelt version of the Complainant's trademark in the disputed domain name, which has no apparent connection to its alleged education and cultural exchange activities. In view of these circumstances, the Panel considers it highly likely that the Respondent had the Complainant's mark in mind when it registered the disputed domain name.

With respect to use, the Respondent currently makes only passive use of the disputed domain name but this does not preclude a finding of use in bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). In the present dispute, the Complainant has acquired a considerable reputation in its BOEHRINGER-INGELHEIM. mark through longstanding and extensive use with its pharmaceutical and veterinary products. Save for the dot in the BOEHRINGER-INGELHEIM. mark, the disputed domain name wholly incorporates that mark with a subtle spelling error and no other element besides a gTLD extension. This is an example of typosquatting which signals an intention to confuse Internet users seeking the Complainant. In the Panel's view, the most likely intended use of the disputed domain name is to attract Internet users who mistype the Complainant's mark and domain name in a browser and divert them to another eventual website. There appears to be no connection between the Respondent's alleged education and cultural exchanges and the disputed domain name. The Respondent provides no explanation of any potential use of the disputed domain name that would not be in bad faith. Although the Respondent argues that it does not promote the disputed domain name anywhere, such promotion remains a possibility as long as it holds the disputed domain name. In all these circumstances, the Panel considers it more likely than not that the Respondent is using the disputed domain name in bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: August 26, 2023