

IN THE MATTER OF DISPUTED DOMAIN NAME: -

'BOEHRINGERINGELHEIM.CO.IN'

BEFORE MR.S.C.INAMDAR, B.COM. LL.B., F.C.S.

SOLE ARBITRATOR

**DELIVERED ON THIS 3rd DAY OF JULY TWO THOUSAND THIRTEEN AT
PUNE, INDIA.**

SUMMARISED INFORMATION ABOUT THE DISPUTE: -

**01. Names and addresses
Of the Complainant: -**

Boehringer Ingelheim Pharma GmbH &
Co.
Germany

Through its authorized
representative

SCHIEDERMAIR Rechtsanwälte
Eschersheimer Landstraße 60
60322 Frankfurt am Main / Germany.

**02. Name and address of
The Respondent: -**

Zhaojiafei
No.105, Wuxi Road, Shuchengzhen,
Shuyangxian, Jiangsu, 223600 China.

03. Registrar

Business Solutions (R54-AFIN)
Accredited .IN Registrar
Mumbai.

04. Calendar of Major events:

Sr. No.	Particulars	Date (Communications in electronic mode)
01	Arbitration case referred to me & acceptance given by me	29/05/2013
02	Hard copy of complaint received	07/06/2013
03	Power of Attorney received	12/06/2013
03	Notice of Arbitration issued (with the instructions to file say / reply latest by 23.06.2013)	13/06/2013
04	Reminder notice sent (with instruction to file say latest by 30/06/2013)	27/06/2013
05	Notice of closure of arbitration	01/07/2013
06	Award passed	04/07/2013

I] PRELIMINARY: -

1. Boehringer Ingelheim Pharma GmbH & Co., KG, a company incorporated under the provisions of the laws of Germany, having its principal office at Binger Straße 173, 55216, Ingelheim am Rhein, Germany (**The Complainant**) has filed complaint with National Internet Exchange of India (NIXI) disputing the registration of domain name '**BOEHRINGERINGELHEIM.CO.IN**' (**the disputed domain name / domain name**), through its authorised representative SCHIEDERMAIR Rechtsanwälte Eschersheimer Landstraße 60, 60322 Frankfurt am Main / Germany.
2. The Complainant has disputed registration of domain name '**BOEHRINGERINGELHEIM.CO.IN**' in the name of **Zhaojiafei**, No.105, Wuxi Road, Shuchengzhen, Shuyangxian, Jiangsu, 223600 China. (**The Respondent / Registrant**).
3. Major events took place as enumerated in the above table.

II] PROCEDURE FOLLOWED IN ARBITRATION PROCEEDINGS: -

01. In accordance with INDRP read with INDRP Rules of Procedure, notice of arbitration was sent to the Respondent on 13th June 2013 with the instructions to file his reply / say latest by 23rd June 2013.
02. Since no reply / say was filed by the Registrant within the prescribed period, this Arbitration Panel extended, *suo-motu*, the period to file say/ reply, if any, latest by 30th June, 2013. However no reply / say was filed by the Registrant / Respondent, even within the extended period.
03. In view of no reply by the Respondent no rejoinders were called for.
04. Copies of notices were marked to the Complainant's authorised representative, Respondent and NIXI every time.
05. No personal hearing was requested / granted / held.

III] SUMMARY OF THE COMPLAINT OF THE COMPLAINANT: -

The Complaint is based on the following points / issues in brief: - -

(A) OWNER OF REGISTERED TRADEMARKS AND DOMAIN NAMES:

1. The Complainant is the owner of following registered trademarks: -

Sr. No.	Trademark Registration No. and date of Registration	Description
01	IPI 1479411 dated 17/08/2006	Word Mark 'BOEHRINGER INGELHEIM'
02	CTM 222493195 dated 07/12/2001	---DO---
03	WIPO 568844 dated 22/03/1991	---DO---
04	WIPO 647381 dated 10/11/1995	---DO---
05	WIPO 722462 dated 02/07/1999	---DO---
06	DPMA 158470 dated 27/02/1912	---DO---
07	DPMA 1102113 dated 06/06/1986	---DO---
	And many more	

Apart from above registered trademarks, the Complainant has other marks world over which are described in Annx C5 of the Complaint.

The Complainant has several websites which include the word boehringerengelheim including www.boehringerengelheim.in, www.boehringerengelheim.com, www.boehringerengelheim.org, www.boehringerengelheim.net and many more which predate the disputed domain name.

(B) IDENTITY OR CONFUSING SIMILARITY OF THE DOMAIN NAME WITH THE TRADEMARKS OF THE COMPLAINANT: -

1. The Registrant's domain name www.boehringerengelheim.co.in directly uses the trademark / trade name BOEHRINGERINGELHEIM as one of the operative words and this name is identical to that of the registered trademarks of the Complainant. The impugned domain name is also extremely identical / similar to the Complainant's international website www.BOEHRINGERINGELHEIM.com. (Policy Para 4(i), Rules Para 3(b)(vi)(1).
2. The Respondent has no rights or legitimate interests in respect of the Disputed domain name. The Complainant has neither granted Respondent any license nor has it otherwise permitted Respondent to use the trademark or even to

apply for any domain name incorporating the said trademark. (Policy Para 4(ii), Rules Para 3(b)(vi)(2))

3. The Respondent sent mails to various members of Complainant's management board stating that the disputed domain name was for sale. It clearly shows that the intention of the Respondent was to make unlawful money by selling or transferring the disputed domain name for monetary consideration, much higher than his actual expenses for registration.

The Respondent has provided false Whois report, changed the details, and offered several times the disputed domain name to be sold to the Complainant for EURO 1890. The Complainant has come to know that the Respondent is a regular cyber squatter and is also involved in registering many other domain names infringing registered trademark rights of third parties. For example varta-microbattery.co.in, zenithoptimedia.co.in etc.

In parallel domain name arbitration proceedings in the matter of La-Roche-Posay versus EAC International Co. Ltd. INDRP/457 in laroche-posay.in matter, identical Mr./Ms. Song acting for the respective respondent offered to sell the Disputed domain name for similar price of USD 1890.

4. The disputed domain name has not been used by the Respondent for any bona fide business purposes nor he has undertaken any demonstrable preparations to make use whatsoever in the said fashion. The website is seeking 'Pay-per-click' (PPC) commissions from diverted internet users who are trying to reach an official site of the Complainant in India. (Policy Para 7(i))
5. There is no evidence given that Respondent is commonly known by the disputed domain name. Boehringer in fact is a family name.
6. The Respondent does not own trademark rights nor any other rights in the word BOEHRINGER INGELHEIM or any other similar variations thereof. (Policy Para 7(ii)).
7. The Respondent is not making any legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain.
8. The disputed domain name was registered and is being used in bad faith. (Policy Para 4(iii), Rules Para 3(b)(vi)(3)).
9. The Respondent has registered disputed domain name primarily for the purpose of selling it to the Complainant who is the owner of trademark for valuable consideration in excess of the documented out of pocket expenses related to the disputed domain name. (Policy Para 6(i)).
10. By using the disputed domain name the Respondent intentionally attempted to attract, for commercial gain, internet users to his website by creating a likelihood of confusion with the Complainant's trademarks. (Policy Para 6(iii))

(C) REMEDIES SOUGHT BY THE COMPLAINANT: -

On the background of the Complaint and reasons described therein the Complainant has requested for transfer of domain name to it.

VI] REPLY TO THE COMPLAINT / STATEMENT OF DEFENSE: -

As stated earlier the Respondent / Registrant has **NOT** filed any say / reply, even within the extended period. Therefore other side of the dispute has not been brought before this panel. In view of no reply by the Respondent / Registrant, this panel has assumed that he has nothing to say and by this act he has accepted all allegations / contents of the Complainant.

VII] REJOINDERS OF THE PARTIES: -

In view of non-filing reply by the Respondent it was not felt necessary to call for rejoinders from the parties to the dispute.

VIII] ISSUES & FINDINGS: -

On the basis of policies and rules framed by NIXI in respect of dispute resolution as also on the basis of submissions of both the parties I have framed following issues. My finding on each issue is also mentioned against it respectively.

SR. NO.	ISSUE	FINDING
01	Does the Complainant have trade mark or service mark directly related to the disputed domain name?	Yes
02	Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?	Yes
03	Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?	No
04	Whether the Registrant has commonly been known by the domain name?	No
05	Whether the Registrant has any legitimate interests in the disputed domain name?	No
06	Whether the Registrant's domain name has been registered or is being used in bad faith?	Yes

07	Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name?	Yes
08	Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?	Yes

VIII] BASIS OF FINDINGS: -

1. Does the Complainant have trade mark or service mark directly related to the disputed domain name?

The Complainant is the owner of various trademarks as stated in the table above. The Complainant also owns various domain names which include the words 'BOEHRINGERINGELHEIM'. The said trademarks have been registered and are in force since last many years.

Therefore my finding on this issue is in affirmative.

2. Whether the Registrant's domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights?

The word 'BOEHRINGERINGELHEIM' is an integral / prominent part of subject domain name and also is an integral / prominent part of the registered Trademarks of the Complainant. It is well established beyond doubt by several arbitral decisions in India as also WIPO cases that mere addition of suffix like .in / .org does not differentiate the domain name from the marks. Looking at the stature of the Complainant, its global presence, as also its strong presence on the internet, it is very hard to believe that the Registrant was not aware of the same.

Against this the Respondent has not claimed having any registered trade mark or service mark consisting of the word 'BOEHRINGERINGELHEIM'.

Therefore my finding on the first issue is affirmative.

3. Whether the Registrant is owner of trade mark or service mark corresponding to the disputed domain name?

The Registrant has not filed any say or reply to the complaint and hence it is presumed that he does not have / he has not claimed nor mentioned of being owner or applicant of any trade mark or service mark corresponding to the disputed domain name.

Therefore my finding on this issue is in negative.

4. Whether the Registrant has commonly been known by the domain name?

The name of the Registrant, as on the Whois records is Zhaojiafei. The mails for offer to sell the disputed domain name were sent by one Song. As such he / she is not commonly known by the domain name or any variation thereof.

Therefore my finding on this issue is in negative.

5. Whether the Registrant has any legitimate interest in the disputed domain name?

The Registrant has no registered trademark or service mark which includes the words 'BOEHRINGERINGELHEIM'. He is not commonly known by that name or any variation or combination thereof. He has not shown any other nexus of his business with the disputed domain name or any authority by the Complainant to use the word 'BOEHRINGERINGELHEIM' in this behalf.

Therefore my finding on this issue is negative.

6. Whether the Registrant's domain name has been registered or is being used in bad faith?

The website does not legitimately offers any goods or services. It only contains links to third party websites, most probably on the basis of PPC. Obviously the Registrant is therefore using it in bad faith for obtaining illegal monetary gains.

Therefore my finding on this issue is affirmative.

7. Has the Registrant registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name?

The Registrant's very act of registering domain name to which he does not have any nexus, rights or interests, and offers only third party links on PPC basis, itself is sufficient to conclude that he has registered domain name only to prevent the owner of the trademark from reflecting the mark in a corresponding domain name.

Therefore my finding on this issue is in affirmative.

8. Whether the Registrant has intentionally attempted to attract internet users to the Registrant's website or other online location by creating likelihood of confusion with the Complainant's name or mark?

The website is merely offering links to third party websites on PPC basis. Any internet user would feel that the website is official site of the Complainant and would get confused due to such links.

Therefore my finding on this issue is affirmative.

IX] CONCLUSION AND BASIS OF AWARD: -

Since the Registrant has not replied to complaint or Notice of Arbitration at all, the following findings and conclusion are based on the documents furnished by the Complainant.

From above discussion this panel has reached the conclusion that: -

(A) According to Para 4 of .IN Domain Name Dispute Resolution Policy (INDRP) I am of the opinion that the Complainant has successfully proved that: -

1. The Registrant's domain name is identical or confusingly similar to a name and trademark in which the Complainant has rights.
2. The Registrant has no rights or legitimate interests in respect of the domain name.
3. The Registrant's domain name has been registered or is being used in bad faith.

(B) According to Para 6 of the INDRP I am of the opinion that the Complainant has also successfully proved that: -

4. Due to the mails exchanged between the Registrant and Complainant it is abundantly clear that the Registrant has registered or acquired the domain name primarily for the purpose of selling the same, to the Complainant who is the owner of the trademark, for valuable consideration in excess of the Registrant's documented out of pocket expenses directly related to the domain name..
5. The Registrant has registered the domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name since the Registrant appears to be a habitual cyber-squatter.
6. By registering the domain name the Registrant has intentionally attempted to attract internet users to the disputed domain name by creating a likelihood of confusion with the Complainant's name or mark as to the source, sponsorship, affiliation or endorsement of the Registrant's website.




On the basis of my findings on issues and foregoing discussion I pass the following award: -

01. The Complainant is entitled to the disputed domain name – 'BOEHRINGERINGELHEIM.CO.IN' and hence the same be transferred to the Complainant.

Dated: - 03.07.2013

Place: - Pune


(S.C. INAMDAR)
SOLE ARBITRATOR