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IN-UP25446277187741V

BEFORE THE NATIONAL INTERNET EXCHANGE OF INDIA
.IN REGISTRY

Arbitral Award in Case No. 1761
Ms. Punita Bhargava, Sole Arbitrator
Disputed domain name: <boehringer-Ingelheim.in>

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In the matter of

Boehringer Ingelheim Pharma GMBH & CO.KG
Binger Strasse 173
55218 Ingelheim
Germany

... Complainant

v.

Maya Lal
WZ, Chudi Wali Gali
Central Delhi 110015
India

...Respondent

1. The Parties

The Complainant in this proceeding is Boehringer Ingelheim Pharma GmbH & Co.Kg, of Binger Strasse 173, 55218 Ingelheim, Germany, a German pharmaceutical company. It is represented in this proceeding by Nameshield of 79 rue Desjardins, 49100 Angers France with email id legal@nameshield.net.

The Respondent in this proceeding is Maya Lal of the address WZ, Chudi Wali Gali Central, Delhi 110015, India with email id legit_scammers@proton.me.

2. Disputed Domain Name and Registrar

This dispute concerns the domain name <boehringer-ingelheim.in> (the 'disputed domain name') registered on August 9, 2023. The Registrar with which it is registered is Dynadot LLC.

3. Procedural History

This proceeding is in accordance with the .IN Domain Name Dispute Resolution Policy (Policy/INDRP), adopted by the National Internet Exchange of India (NIXI).

By its email of October 3, 2023 NIXI requested availability of Ms. Punita Bhargava to act as the Sole Arbitrator in the matter. The Arbitrator indicated her availability and submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the .INDRP Rules of Procedure (Rules) on the same date. Thereafter, in accordance with the Rules, NIXI appointed the Arbitrator by email of and notified the Respondent of the Complaint.

As the Arbitral Tribunal is properly constituted, the Arbitrator sent an email on October 4, 2023 informing all concerned of the commencement of the proceeding, asking the Complainant to comply with the service formalities and asking the Respondent to file its Reply by October 20, 2023.

On October 11, 2023, Representative for the Complainant sought clarification regarding service of hard copy of Complaint on the Respondent which was provided

by the Arbitrator. On October 26, 2023, Representative for the Complainant provided proof of dispatch of hard copy of Complaint and Annexures to the Respondent. As the Respondent had already been served by email, on October 26, 2023 the Arbitrator sent a mail to all concerned that no Reply had been received from the Respondent within the time granted or till date and she would proceed to pass the Award basis the material available.

4. The Complainant and the legal case pleaded by it

The Complainant states that it is a family-owned pharmaceutical group of companies with roots going back to 1885, when it was founded by Albert Boehringer (1861-1939) in Ingelheim am Rhein. Ever since, the Complainant has become a global research-driven pharmaceutical enterprise and has today over 53,000 employees. The three business areas of the Complainant under the name and mark BOEHRINGER INGELHEIM are Human Pharma, Animal Health and Biopharmaceutical Contract Manufacturing. In 2022, net sales of the BOEHRINGER INGELHEIM group amounted to about 24.1 billion euros. It has filed its Company Profile as Annex 2 in this proceeding.

The Complainant states that it owns a large portfolio of trademarks including the name and mark BOEHRINGER INGELHEIM in several countries including India, which it has filed as Annex 3 including the following

- Registration for BOEHRINGER INGELHEIM under no 1479411; registered since August 17, 2006;
- IR the international trademark BOEHRINGER-INGELHEIM under no. 221544, registered since July 2, 1959 and duly renewed;
- the international trademark BOEHRINGER INGELHEIM under no. 568844 registered since March 22, 1991.

In addition, the Complainant owns multiple domain names consisting in the wording BOEHRINGER INGELHEIM, such as <boehringer-ingelheim.com> registered since September 1, 1995 and <boehringer-ingelheim.in>, registered since November 10, 2005. It has filed Whois details of these as Annex 4.

The Complainant states that the disputed domain name was registered on August 9, 2023 and resolves to the Complainant's official website <https://www.boehringer-ingelheim.com/in/>. It has filed extracts in support as Annexes 5 and 6.

Based on the above, with regard to the three elements of the Policy, the Complainant submits as under and asserts that each of the three factors are established:

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The Complainant states that the disputed domain is confusingly similar to its trademark BOEHRINGER-INGELHEIM. The obvious misspelling of the Complainant's trademark BOEHRINGER-INGELHEIM®, i.e. the substitution of the letter "I" by the letter "L" in the denomination INGELHEIM, is characteristic

of a typo-squatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

The Complainant states that previous panels have found that the slight spelling variations does not prevent a domain name from being confusing similar to the Complainant's trademark. It relies on CAC Case No. 102708, Boehringer Ingelheim Pharma GmbH & Co.KG v. Stave Co Ltd <boehringer-ingelheim.com> ("It is the common view among UDRP Panellists that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name, see Edmunds.com, Inc. v. Digi Real Estate Foundation, WIPO Case No.D2006-1043, <edmundss.com>. The disputed domain name is such a typo-squatting domain and is accordingly confusingly similar to the trademark of the Complainant.").

Further, the Complainant contends that the addition of the ccTLD ".IN" is not sufficient to escape the finding that the domain is confusingly similar to its trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

- B. The Respondent has no rights or legitimate interests in respect of the domain name
The Complainant contends that the Respondent registered the domain name for the sole purpose of creating confusion and misleading the general public and therefore is not making a legitimate, fair or bona fide use of the domain name. It relies on Case No. INDRP/776, Amundi v. GaoGou, that the Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4 (II) of the INDRP Policy.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the disputed domain name redirects to the Complainant's official website <https://www.boehringer-ingelheim.com/in/>. The Complainant's contends that the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, or a legitimate non-commercial or fair use of it. It relies on NAF Case No. FA 1363660, Better Existence with HIV v. AAA ("[E]ven though the disputed domain name still resolves to Complainant's own website, Respondent's registration of the disputed domain name in its own name fails to create any rights or legitimate interests in Respondent").

C. The domain name was registered or is being used in bad faith.

The Complainant asserts that the disputed domain name <boehringer-ingelheim.in> is confusingly similar to its trademark BOEHRINGER-INGELHEIM. It states that given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

It relies on WIPO Case No. D2019-0208, Boehringer Ingelheim Pharma GmbH & Co. KG v. Marius Graur, "Because of the very distinctive nature of the Complainant's trademark [BOEHRINGER-INGELHEIM] and its widespread and longstanding use and reputation in the relevant field, it is inconceivable that the Respondent registered the disputed domain name without being aware of the Complainant's legal rights.") and CAC Case No. 102274, Boehringer Ingelheim Pharma GmbH & Co. KG v. Karen Liles, "In the absence of a response from Karen Liles and given the reputation of the Complainant and its trademark (see, among others, WIPO Case No. D2016-0021, Boehringer Ingelheim Pharma GmbH & Co. KG v. Kate Middleton), the Panel infers that the Respondent had the Complainant's trademarks BOEHRINGER-INGELHEIM in mind when registering the disputed domain name."

The Complainant states that registering of the disputed domain name with the misspelling of the trademark BOEHRINGER-INGELHEIM® was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith. It relies on WIPO Case No. D2016-1546, Boehringer Ingelheim Pharma GmbH & Co. KG v. Martin Hughes <boehringer-ingalheim.com> ("the registration of the Domain Name which contains obvious misspelling of the Complainant's BOEHRINGER-INGELHEIM trademark and which is virtually identical to the Complainant's <boehringer-ingelheim.com> domain name constitutes registration and use bad faith.").

The Complainant states that the disputed domain name redirects to the Complainant's official website <https://www.boehringer-ingelheim.com/in/>. Thus, the Respondent has knowledge of the Complainant's rights prior to the registration of the disputed domain name, which is a hallmark of bad faith. It relies on NAF Case No. FA 1382148, Verizon Trademark Servs. LLC v. Boyiko ("The Panel finds that Respondent's registration and use of the confusingly similar disputed domain name, even where it resolves to Complainant's own site, is still registration and use in bad faith pursuant to Policy ¶ 4(a)(iii).").

The Complainant asserts that the disputed domain name has been registered by the Respondent in an effort to take advantage of the good reputation Complainant had built up in its BOEHRINGER-INGELHEIM trademarks, with the sole aim to create a likelihood of confusion with the Complainant's trademarks and domain names.

In view of the above submissions, the Complainant requests for transfer of the disputed domain name.

5. Respondent's Default

Despite notice of the present proceeding in terms of the Rules and an opportunity to respond, no response has been received from the Respondent in this matter by the Arbitrator.

6. Discussion and Findings

The Arbitrator has reviewed the Complaint and the Annexures filed by the Complainant.

The Policy requires that the Complainant must establish three elements *viz.* (i) the Registrant's domain name is identical or confusingly similar to a name, trademark or service mark in which the Complainant has rights; (ii) the Registrant has no rights or legitimate interests in respect of the domain name; and (iii) the Registrant's domain name has been registered or is being used in bad faith. These are discussed hereunder:

(i) Identical or Confusingly Similar

As regards to the first element, the Complainant has established that it has rights in the trade name and trademark BOEHRINGER-INGELHEIM. It has roots going back to 1885 when it was founded by Albert Boehringer in Ingelheim am Rhein. It has over 53,000 employees and its net sales in 2022 amounted to about 24.1 billion euros. It owns the registrations for BOEHRINGER INGELHEIM in several countries, the details of which it has provided. In India, it has a registration for BOEHRINGER INGELHEIM under no. 1479411 which was registered on August 17, 2006. The Complainant also owns domain names consisting incorporating BOEHRINGER INGELHEIM, such as <boehringer-ingelheim.com> registered September 1, 1995 and <boehringer-ingelheim.in> registered November 10, 2005.

Based on the submissions of the Complainant and the documents filed by it, the Arbitrator accepts that it has used the BOEHRINGER-INGELHEIM name and mark for several decades and there is no dispute as to the Complainant's ownership of its registered trademark BOEHRINGER-INGELHEIM.

The Arbitrator notes that the disputed domain name is nothing but the Complainant's BOEHRINGER-INGELHEIM name and mark with a typo and typical of typo-squatting. It is settled and the Arbitrator accepts that the slight spelling variation does not prevent a domain name from being confusing similar to the Complainant's trademark. See CAC Case No. 102708, Boehringer Ingelheim Pharma GmbH & Co.KG v. Stave Co Ltd and Edmunds.com, Inc. v. Digi Real Estate Foundation, WIPO Case No. D2006-1043, *supra*.

It is also settled that for the purpose of comparing a trademark with a disputed domain name, the country code top-level domain (ccTLD) can be excluded.

The Arbitrator accordingly finds that the first element is satisfied and that the disputed domain name is confusingly similar to the Complainant's registered trademark.

(ii) Rights or Legitimate Interests

As regards to the second element, the Complainant must establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. With respect to this requirement, a Complainant is generally required to make a prima facie case that a Respondent lacks rights or legitimate interests and once such prima facie case is made, the burden of proof shifts to the Respondent to come forward with evidence demonstrating rights or legitimate interests in the disputed domain name. Paragraph 6 of the Policy contains a non-exhaustive list of the circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name.

With regard to this element, there are several contentions made by Complainant that the Respondent does not have rights or legitimate interests in the disputed domain name. The Respondent is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the trademark, or apply for registration of the disputed domain name by the Complainant. Further, the disputed domain name redirects to the Complainant's official website <https://www.boehringer-ingelheim.com/in/>. The Complainant states and the Arbitrator accepts that the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name or a legitimate non-commercial or fair use of it. See Better Existence with HIV v. AAA, NAF Case No. FA 1363660 supra.

As the Respondent has not countered or objected to the Complainant's claim and has failed to come forward with any information that could support its rights or legitimate interests in the disputed domain name, the Complainant is deemed to have satisfied the second element. See Volkswagen AG v. Nowack Auto und Sport – Oliver Nowack, WIPO Case No. D2015-0070 and OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149.

Accordingly, based on the undisputed contentions made by the Complainant, it has made a prima facie case with regard to the second element and the Arbitrator finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(iii) Registered or Used in Bad Faith

The final criterion of the Policy requires the Complainant to show that the domain name was registered or used in bad faith. Clause 7 sets out the

circumstances without limitation which, if present, constitute evidence of registration or use of a domain name in bad faith:

- a. circumstances indicating that the Registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, who bears the name or is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant's documented out-of-pocket costs directly related to the domain name; or
- b. the Registrant has 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, provided that the Registrant has engaged in a pattern of such conduct; or
- c. by using the domain name, the Registrant has intentionally attempted to attract Internet users to the Registrant's website or other on-line location, 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 or location or of a product or service on the Registrant's website or location.

As regards this element, based on the contentions of the Complainant describing its business under registrations for BOEHRINGER-INGELHEIM and worldwide use of the same, the Arbitrator accepts that BOEHRINGER-INGELHEIM is associated with the Complainant. Its rights far predate the registration of the disputed domain name by the Respondent. It stands to reason that the Respondent is aware of the Complainant and its business under the BOEHRINGER-INGELHEIM name and mark and adoption of the disputed domain name is not a mere coincidence. See Boehringer Ingelheim Pharma GmbH & Co. KG v. Marius Graur, WIPO Case No. D2019-0208 and Boehringer Ingelheim Pharma GmbH & Co. KG v. Karen Liles, CAC Case No. 102274 supra.

The Arbitrator also accepts that registration of the disputed domain name with misspelling of the trademark BOEHRINGER-INGELHEIM was intentionally designed to be confusingly similar with the Complainant's trademark. Such conduct has been held to be evidence of bad faith. See Boehringer Ingelheim Pharma GmbH & Co. KG v. Martin Hughes, WIPO Case No. D2016-1546, where it was held that registration of the domain name which contains obvious misspelling of the Complainant's BOEHRINGER-INGELHEIM trademark and which is virtually identical to the Complainant's <boehringer-ingelheim.com> domain name constitutes registration and use bad faith.

The fact that the disputed domain name redirects to the Complainant's official website is also evidence of bad faith. The Arbitrator accepts that the disputed domain name has been registered by the Respondent in an effort to take advantage of the good reputation Complainant had built up in its BOEHRINGER-INGELHEIM name and mark with the sole aim to create a

likelihood of confusion with the Complainant's trademarks and domain names.

Thus, the Arbitrator concludes that the Respondent registered the disputed domain name in bad faith and that there is no way in which it could use the disputed domain name without violating the Policy.

Accordingly, the Arbitrator finds that the Complainant has established all three elements as required by the Policy.

7. Decision

For all the foregoing reasons, the Complaint is allowed and it is hereby ordered in accordance with paragraph 10 of the Policy that the disputed domain name be transferred to the Complainant. There is no order as to costs.

This award has been passed within the statutory deadline of 60 days from the date of commencement of arbitration proceeding.



Punita Bhargava (Ms.)
Sole Arbitrator
Date: December 1, 2023