Decision for dispute CAC-UDRP-101387

Case number	CAC-UDRP-101387
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Domain names	bouygeus-construction.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	BOUYGUES

Complainant representative

Organization	Nameshield (Anne Morin)

Respondent

Organization	Laura Clare

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings.

IDENTIFICATION OF RIGHTS

The Complainant made an application at WIPO under the Madrid Protocol for international trademark protection for the word mark BOUYGUES CONSTRUCTION, based on its French national mark by application n°732339 and was registered in 48 countries including the major nations of the world such as the UK and US and most of the EU members and beyond. There is no question that the Complainant has rights in the name and mark BOUYGUES CONSTRUCTION. It also relies upon its use in trade and any rights created in common law jurisdictions where it has used its marks.

FACTUAL BACKGROUND

Founded in France in 1952, BOUYGUES S.A. (the Complainant) is a diversified group of industrial companies focusing on construction (Bouygues Construction, Bouygues Immobilier, and Colas) and telecoms and media (French TV channel TF1 and Bouygues Telecom). The subsidiary, BOUYGUES CONSTRUCTION, is a world player in the fields of building, public works, energy, and services. As a global player in construction and services, BOUYGUES CONSTRUCTION designs, builds and operates buildings and structures, both public and private buildings, transport infrastructures and energy and communications networks. The Group has some 53,500 employees.

The Complainant is the owner of several trademarks for BOUYGUES CONSTRUCTION, including the international trademark application for BOUYGUES CONSTRUCTION n°732339 registered April 13th, 2000 by WIPO and accepted in the national registries designated. The Complainant also owns an important domain name portfolio, including the same distinctive wording BOUYGUES CONSTRUCTION, of which the main domain name is <bouygues-construction.com>, registered since May 10th, 1999.

The Disputed Domain Name <bouygeus-construction.com> was registered on November 13th, 2016 by the Respondent "Laura Clare". Only two characters are different –the E and U in geus are in reverse order.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant states that the disputed domain name <bouygeus-construction.com> is highly similar to his international trademark BOUYGUES CONSTRUCTION. Indeed, the reversal of both letters "E" and "U" in the word BOUYGUES is not sufficient to escape the finding that the domain name is confusingly similar to the international trademark BOUYGUES CONSTRUCTION®. On the contrary, this is considered as typosquatting. Furthermore, the Complainant contends the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the international trademark BOUYGUES CONSTRUCTION of the Complainant. It does not prevent the likelihood of confusion between the Disputed Domain Name and the Complainant, its trademarks and its domain names associated. Finally, according to the Complainant a Google search on the expression BOUYGUES CONSTRUCTION provides several results, all of them being linked with the Complainant. Thus, the disputed domain name <bouygeus-construction.com> is confusingly similar to the Complainant's trademarks BOUYGUES CONSTRUCTION.

The Complainant claims the Respondent does not have any rights or legitimate interest in the disputed domain name. The Complainant reminds the WIPO case No. D2003-0455, "Croatia Airlines d.d. v. Modern Empire Internet Ltd.", according to which a 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, 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(a) (ii) of the UDRP.

In this case, the Complainant states that the Respondent is not affiliated with him nor authorized by him in any way. The Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name and he is not related in any way to his business. The Complainant does not carry out any activity for, nor has any business with the Respondent.

According to the Whois of the disputed domain name <bouygeus-construction.com>, the Respondent is "Laura Clare". Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is known as "Laura Clare" and not as "Bouygues Construction." See: NAF cases No. FA699652 "Braun Corp. v. Loney" and No. FA139720 "Tercent Inc. v. Lee Yi". Moreover, the website in relation with the disputed domain name <bouygeus-construction.com> is inactive since its registration. It is established that a domain name holder has no legitimate interest in the absence of credible evidence of use or demonstrable preparation of use of the domain name in connection with a bona fide offer products or services. See: WIPO case No. D2002-0878 "Vector Aerospace Corporation c. Daniel Mullen" and NAF case No. FA109697 "LFP, Inc. v. B & J Props". In this sense, the Respondent could not have use this domain name without infringing the Complainant's intellectual property rights on the expression BOUYGUES CONSTRUCTION. Therefore, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <bouygeus-construction.com>.

According to the Complainant the domain name has been registered and is being used in bad faith. The Complainant states that the disputed domain name <bouygeus-construction.com> is highly similar to his international trademark BOUYGUES CONSTRUCTION. Indeed, the reversal of both letters "E" and "U" in the word BOUYGUES is not sufficient to escape the finding that the domain name is confusingly similar to the international trademark BOUYGUES CONSTRUCTION. On the

contrary, this is considered as typosquatting. Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. See: WIPO case No. D2004-0673 "Ferrari S.p.A v. American Entertainment Group. Inc." Moreover, the website in relation with the disputed domain name <bouygeus-construction.com> is inactive since its registration. As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. See: WIPO cases No. D2000-0003 "Telstra Corporation Limited v. Nuclear Marshmallows" and No. D2000-0400 "CBS Broadcasting, Inc. v. Dennis Toeppen".

Finally, the Respondent's mere act of typosquatting presents ample evidence of bad faith in the circumstances of this case. See: WIPO case No. D2001-0970 "Briefing.com Inc. v. Cost New Domain Manager "(finding that "Respondent has demonstrated bad faith by engaging in 'typo-piracy' to confuse Internet users and draw them away from Complainant's web site"). Thus, the Complainant contends that the disputed domain name <bouygeus-construction.com> was registered and is being used in bad faith. It also relies on following cases:

NAF - FA699652 -Braun Corp. v. Loney
NAF - FA139720 -Tercent Inc. v. Lee Yi
WIPO - D2002-0878 - Vector Aerospace Corporation c. Daniel Mullen.
NAF - FA109697 - LFP, Inc. v. B & J Props.
WIPO - D2004-0673 - Ferrari S.p.A v. American Entertainment Group. Inc.
WIPO - D2000-0003 - Telstra Corporation Limited v. Nuclear Marshmallows
WIPO - D2000-0400 - CBS Broadcasting, Inc. v. Dennis Toeppen
WIPO - D2001-0970 - Briefing.com Inc. v. Cost New Domain Manager

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant made an application at WIPO under the Madrid Protocol for international trademark protection for BOUYGUES CONSTRUCTION, based on its French mark by application n°732339 and was registered in 48 countries including the major nations of the world such as the UK and US and most of the EU members and beyond. There is no question that the Complainant has rights in the name and mark BOUYGUES CONSTRUCTION. It also relies upon its use in trade and any common law rights created in common jurisdictions where it is in use. The Complainant says the Disputed Domain Name <bouygeus-construction.com> is highly similar to his international trademark BOUYGUES CONSTRUCTION and the reversal of both letters "E" and "U" in the word BOUYGUES is not sufficient to escape the finding that the domain name is confusingly similar. On the contrary, this is paradigm typosquatting and so the Panel finds.

The Complainant has, to the satisfaction of the Panel, shown the 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

By paragraph 4(a)(ii) of the Policy, a Complainant must prove that the Respondent has no rights or legitimate interests in respect of the domain name. The non-exhaustive grounds upon which it may rely are set out in paragraph 4(c) of the Policy and so the following may evidence rights or legitimate interests: (i) a bona fide offering of goods or services; (ii) being commonly known by the name; and (iii) making legitimate non commercial or fair use of the domain name.

This element is therefore part of the Complainant's burden, see WIPO case No. D2003-0455, "Croatia Airlines v. Modern Empire Internet Ltd." (a 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(a)(ii) of the UDRP) and WIPO case No. D2004 -0110 (belupo.com) (same).

The Respondent has not come forward to assert rights or interests and does not on the face of the facts have any rights or legitimate interest in the disputed domain name. No use can be bona fide where a domain name was selected to create and capitalize on confusion and trade on the reputation of the trade mark owner or to impersonate the owner. Typosquatting is a form of impersonation. This is not consistent with honest or fair or legitimate use. Bettinger, Domain Name Law and Practice, Second Ed. p.1383, para. IIIE.302. See also WIPO case No. D2009-1091 (dyson24-7.com).

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Bad Faith criteria under the Policy is illustrated in in paragraph 4(b)(i) -(iv) which has a non-exhaustive list of recognised forms of Bad Faith. These include registered primarily for: (i) sale etc. to the Complainant, (ii) as a blocking registration, (iii) for disrupting the business of a competitor, or (iv) intentionally to attract for commercial gain, internet users to the respondent's site or location by creating a likelihood of confusion with the complainant's mark etc.

The Complainant has, to the satisfaction of the Panel, shown the 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

Here only two characters of the disputed domain name are different from the Complainant's well known registered mark – the E and U in geus are in reverse order. The Respondent has not come forward with any explanation and has on the face of it, no rights or interests in the name. This is a case of blatant and overt typosquatting. No use can be bona fide where a domain name was selected to create and capitalize on confusion and trade on the reputation of the trade mark owner or to impersonate the owner. Typosquatting is a form of impersonation. This is not consistent with honest or fair or legitimate use. Bettinger, Domain Name Law and Practice, Second Ed. p.1383, para. IIIE.302. See also WIPO case No. D2009-1091 (dyson24-7.com).

It is a case of paradigm bad faith registration and use to divert traffic to the disputed domain name. See CAC case No. 100549 (remeymartin.com), WIPO case No. D2011-0003 (allsatate.com) and CAC case No. 100666 (cetaphyl.com). Typosquatting also indicates that the Respondent was aware of the Complainant at the time of registration, see WIPO case No. 2010 -1414 (wwvaletwaste.com) and Typosquatting is a known category of disruption. See Bettinger, Domain Name Law and Practice, Second Ed. p.1426, para. IIIE. 401. Bad Faith is made out.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGEUS-CONSTRUCTION.COM**: Transferred

PANELLISTS

Name	**Victoria McEvedy**

DATE OF PANEL DECISION 2017-01-16

DATE OF PANEL DECISION 2017 01 10

Publish the Decision