Decision for dispute CAC-UDRP-101563

Case number	CAC-UDRP-101563
Time of filing	2017-06-08 09:34:00
Domain names	bouygues-contructions.com

Case administrator

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

Complainant

Organization	BOUYGUES S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Gabriel Yves

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the holder of trademark registrations consisting of the sign BOUYGUES CONSTRUCTION, including the international trademark registration No. 732339, registered since April 13, 2000 in class 37 (hereinafter, the “BOUYGUES CONSTRUCTION trademark”).

FACTUAL BACKGROUND

The Complainant is the holding company of a diversified group of industrial companies, including Bouygues Construction, a company which constructs, designs and/or operates public and private buildings, transport infrastructures and energy and communications networks.

The disputed domain name <bouygues-contructions.com> was registered on May 17, 2017. The disputed domain name currently does not resolve. However, the domain name has been used for sending emails to possible business partners of the Complainant. The Complainant submits an email which was sent via the disputed domain name on May 22, 2017 and in which the sender tries to impersonate the Complainant’s commercial director. The email also mentions the domain name <bouygues-construction.com>, which belongs to the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been commonly known by the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith.

RESPONDENT:

The Respondent did not reply to the Complainant’s contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.
The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

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

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

3. The disputed domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

Confusing similarity of the disputed domain name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since Complainant is the holder of the BOUYGUES CONSTRUCTION trademark, which is used in connection with its business, it is established that there is a trademark in which Complainant has rights.

The Panel considers the disputed domain name <bouygues-contructions.com> to be composed of a name which is virtually identical to the BOUYGUES CONSTRUCTION trademark. The addition of a hyphen and the omission of the letter “s” in the word “construction” and the addition of the letter “s” at the end of the word “construction” are insufficient to remove the confusing similarity between the disputed domain name and the Complainant’s trademark.

Accordingly, the Complainant has made out the first of the three elements that it must establish.

No legitimate rights

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent. (See: Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094 (championinnovation.com); Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455 (croatiaairlines.com); Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110 (belupo.com).)

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. Respondent’s use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between Complainant and Respondent existed.

In the circumstances of this case, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. The email communication shortly after the registration of the disputed domain name shows that the Respondent tried to pass himself off as a representative of the Complainant with an apparent fraudulent purpose. The Respondent did not reply to the Complaint. The Panel therefore concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006 1052).

Policy Paragraph 4(b) provides a non-exclusive list of factors, any one of which may demonstrate bad faith registration and use, namely:

(i) circumstances indicating that the domain name is registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name (Policy Paragraph 4(b)(i));

(ii) the registration of a 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 Respondent has engaged in a pattern of such conduct (Policy

Paragraph 4(b)(ii));

(iii) the registration of a domain name primarily for the purpose of disrupting the business of a competitor (Policy Paragraph 4(b)(iii)); and

(iv) the use of a domain name for intentionally attempting to attract, for commercial gain, Internet users to a web site 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 Respondent’s web site or location or of a product or service on Respondent’s web site or location (Policy Paragraph 4(b)(iv)).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant’s trademark rights at the time of registration can evidence bad faith (See BellSouth Intellectual Property Corporation v. Serena, Axel, WIPO Case No. D2006-0007).

In the present case, the Respondent’s awareness of the Complainant is not only apparent from the distinctiveness and reputation of the Complainant’s trademark; it is also apparent from the fact that, within days following the registration of the disputed domain name, the Respondent attempted to impersonate the commercial director of the Complainant’s subsidiary, Bouygues Construction. The Respondent’s impersonation attempt was unmistakably for scamming purposes and is clear evidence of bad faith use of the disputed domain name.

Considering the above, the Panel finds that the Complainant has made out the three elements that it must establish.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGUES-CONTRUCTIONS.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2017-07-20

Publish the Decision