# Decision for dispute CAC-UDRP-101586

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| Case number | CAC-UDRP-101586 |
| Time of filing | 2017-06-30 11:30:49 |
| Domain names | bouygues-batiments-ile-de-france.com |

## Case administrator

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| Name | Aneta Jelenová (Case admin) |

## Complainant

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| Organization | BOUYGUES |

## Complainant representative

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| Organization | Nameshield (Anne Morin) |

## Respondent

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| Organization | 1&1 Internet Limited |

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the Disputed domain name.

IDENTIFICATION OF RIGHTS

In these proceedings, the Complainant relies on the following trademark:

- BOUYGUES BATIMENT, International Registration No. 723515, filed on November 22, 1999, in the name of BOUYGUES (the Complainant).

It is worth noting that, the Complainant also owns some registrations for the same trademark in specific countries and in the EU, which have not been cited in these proceedings.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a French-based group of companies, founded in 1952 and active in two main fields: construction, with Bouygues Construction, Bouygues Immobilier, and Colas; and telecoms and media, with French TV channel TF1 and Bouygues Telecom.

BOUYGUES BATIMENT Ile-de-France is a subsidiary of Bouygues Construction, which offers public facilities, private commercial buildings, housing and industrial civil engineering.

The Complainant owns a significant portfolio of trademarks including the wording "BOUYGUES BATIMENT", among which an international registration dating back to 1999. It also owns a multitude of related domain names, like <bouygues-batiment-ile-de-france.com>, since September 30, 2008.

The Disputed domain name <bouygues-batiments-ile-de-france.com> was registered on January 31, 2017 by the Respondent with Whois privacy services.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant contends that the Disputed domain name is confusingly similar to its BOUYGUES BATIMENT trademark; that the Respondent lacks rights or legitimate interests in the Disputed domain name, and; that the Respondent registered and used the Disputed domain name in bad faith.

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).

More precisely, the Disputed domain name <bouygues-batiments-ile-de-france.com> is highly similar to the Complainant’s International Trademark Registration for BOUYGUES BATIMENT and to its domain name <bouygues-batiment-ile-de-france.com>. Indeed, the mere addition of the letter “s” at the end of the word “batiment” is not sufficient to escape the finding of confusing similarity.

The Disputed domain name consists of the Complainant's trademark, accompanied by a geographical term (île de France), where the Complainant has indeed got a subsidiary company.

Further, the Complainant has presented a Google search on the expression BOUYGUES BATIMENT that provides several results, all of them being linked with the Complainant.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, Panelists in UDRP proceedings have generally agreed that it is sufficient for the Complainant to establish a prima facie case that the Respondent lacks rights or legitimate interests in the Disputed domain name to shift the burden of proof to the Respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the BOLLORE trademark in a domain name, and that it had never licensed its trademark to the Respondent, who is not affiliated or doing any business with the Complainant.

Furthermore, the Disputed domain name has apparently been in registrar parking page since its registration. It does not resolve to an active website and therefore the Respondent cannot demonstrate any use of the Disputed domain name in

connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the Disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the Disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the Disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore the Panel is satisfied that also the second requirement under the Policy is met.

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).

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademark and the fact that the Disputed domain name fully incorporates this trademark, it is clear that, at the time of the registration of the Disputed domain name, the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third party amounts to registration in bad faith.

With respect to use in bad faith, the Disputed domain name does not resolve to an active website, but to a parking page, since its registration. Lack of use of a domain name can amount to use in bad faith in some circumstances, such as when the complainant’s trademark has such a strong reputation that it is widely known, and when it is impossible to conceive any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate. These are exactly the circumstances that apply in the case at issue. The trademark BOUYGUES enjoys wide and extensive reputation. Therefore it is impossible to conceive any plausible active use of the Disputed domain name that would be legitimate. Therefore the Panel finds it clear that the Disputed domain name was used in bad faith.

Further, the Complainant has provided evidence that, the domain name <bouygues-batiments-ile-de-france.com> was registered and used for the purpose of creating fraudulent e-mail addresses, such as <thierry.roulet@bouygues-batiments-ile-de-france.com>.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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

The Disputed domain name wholly incorporates the Complainant's trademark, accompanied by a geographical term. The Disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the Disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the Disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the Disputed domain name with full knowledge of the Complainant's well-known trademark. His passive use of the Disputed domain name is in bad faith as there is no conceivable use of the Disputed domain name that could amount to a legitimate use.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGUES-BATIMENTS-ILE-DE-FRANCE.COM**: Transferred

## PANELLISTS

| Name | **Sozos-Christos Theodoulou** |
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DATE OF PANEL DECISION 2017-08-08

Publish the Decision