Decision for dispute CAC-UDRP-101744

Case number	CAC-UDRP-101744
Time of filing	2017-10-24 09:25:03
Domain names	BOUYGUESUK.COM

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	BOUYGUES S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Norland – Martin Joeseph

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided between the same parties and relating to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of several trademark registrations containing or consisting of the term “BOUYGUES” in particular international trademark no. 390771 registered on September 1, 1972 for goods and services in classes 6, 19, 37 and 42 and also word mark no. UK00002349366 registered in Great Britain on November 6, 2004. Moreover, it is the owner of various domain names including the term “BOUYGUES”, in particular <bouygues.com> created on September 12, 1997.

FACTUAL BACKGROUND

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

The Complainant, founded by Francis Bouygues in 1952, is a diversified group of industrial companies. Its businesses are centred on two hubs: construction (Bouygues Construction, Bouygues Immobilier, and Colas); telecoms and media (French TV channel TF1 and Bouygues Telecom).

The Complainant further contends the distinctiveness of its trademarks and reputation.

The Disputed Domain Name <bouyguesuk.com> was registered on October 5, 2017 and resolves to an inactive page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

1. The Panel finds that the Disputed Domain Name <bouyguesuk.com> is confusingly similar to Complainant's trademarks. Many Panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the Disputed Domain Name incorporates the complainant's trademark in its entirety. Also in this case the Complainant's registered trademark "BOUYGUES" is fully included in the Disputed Domain Name.

Furthermore, it is view of this Panel that the addition of the geographic indication "uk" does not add distinctive matter so as to distinguish it from Complainant's trademark. Previous panels have found that the addition of a geographic indication to a distinctive trademark does not diminish the distinctiveness of the trademark. In this particular case, this term rather leads to confusing the Internet users who may conclude that the website triggered through the Disputed Domain Name may represent the UK-United Kingdom branch of the Complainant's business.

2. In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name <bouyguesuk.com>.

In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way and it is not related in any way to the Complainant's business. In addition, the Respondent is not commonly known by the Disputed Domain Name.

Finally, the website to which the Disputed Domain Name resolves is an inactive webpage. This can neither be considered as bona fide offering of goods or services nor a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. In fact, there is no use at all.

3. Finally, the Panel finds that the Disputed Domain Name has also been registered and is being used in bad faith.

It is the view of this Panel that the Respondent has intentionally registered the Disputed Domain Name, which fully includes the Complainant's trademark "BOUYGUES". By the time the Disputed Domain Name was registered, the Panel considers it

unlikely that Respondent did not have knowledge of the Complainant's rights on its trademarks.

In addition, the Panel interpretes the fact that the disputed domain name resolves to an inactive webpage in a manner that it does not prevent a finding of bad faith, taking into consideration not only the distinctiveness of Complainant trademarks, but also Respondent's failure to submit a response or to provide any evidence of any actual or contemplated good faith use of the Disputed Domain Name and Respondent's use of privacy registration service.

In this regard, the Panel shares the view expressed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0"), at point 3.3. "Can the "passive holding" or non-use of a domain name support a finding of bad faith?: "From the inception of the UDRP, panellists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panellists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put".

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGUESUK.COM**: Transferred

PANELLISTS

Name	**Dr. Tobias Malte Müller**

DATE OF PANEL DECISION 2017-12-13

Publish the Decision