# Decision for dispute CAC-UDRP-102404

| | |
|---|---|
| Case number | CAC-UDRP-102404 |
| Time of filing | 2019-03-20 10:45:26 |
| Domain names | construction-bouygues.com |

## Case administrator

| | |
|---|---|
| Name | Šárka Glasslová (Case admin) |

## Complainant

| | |
|---|---|
| Organization | BOUYGUES S.A. |

## Complainant representative

| | |
|---|---|
| Organization | Nameshield (Enora Millocheau) |

## Respondent

| | |
|---|---|
| Name | christophe fernandes |

OTHER LEGAL PROCEEDINGS

The Panel is unaware of other legal proceedings, pending or otherwise, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks BOUYGUES CONSTRUCTION, such as International Registration No. 732339 BOUYGUES CONSTRUCTION, registered since April 13th, 2000.

FACTUAL BACKGROUND

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

Founded by Francis Bouygues in 1952, BOUYGUES S.A. (the Complainant) is a diversified group of industrial companies. Its businesses are centred on two hubs: construction, with Bouygues Construction, Bouygues Immobilier, and Colas; and telecoms and media, with French TV channel TF1 and Bouygues Telecom. Operating in 90 countries, the Complainant's net profit attributable to the Group amounted to €1085 million in 2017.

Its subsidiary BOUYGUES CONSTRUCTION is globally active in the fields of building, public works, energy, and services (please see their website at <bouygues-construction.com>).

As a globally active company in construction and services, BOUYGUES CONSTRUCTION designs, builds and operates

buildings and structures to improve the quality of people's living and working environment: public and private buildings, transport infrastructures and energy and communications networks.

The Complainant is the owner of several trademarks BOUYGUES CONSTRUCTION, such as International Registration No. 732339 BOUYGUES CONSTRUCTION, registered since April 13th, 2000.

The Complainant also owns, through its subsidiary, a number of domain names including the same distinctive wording BOUYGUES CONSTRUCTION such as <bouygues-construction.com>, registered since May 10th, 1999.

The disputed domain name <construction-bouygues.com> was registered on January 3rd, 2019.

The website in relation with the disputed domain name <construction-bouygues.com> points to a page “Parallels Plesk Automation”, a commercial web hosting platform. Moreover, the domain name has been used in a phishing scheme for which evidence was provided in the form of an e-mail supposedly originating from the Complainant.

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

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the disputed domain name should be transferred or cancelled:

(i) the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed domain name; and

(iii) the Disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The Disputed domain name is confusingly similar to the Complainant's Trademark, company name and domain. This finding is based on the settled practice in evaluating the existence of a likelihood of confusion of

a) disregarding the top-level suffix in the domain name (i.e. ".com"), and

b) not finding that the reversal of the order of the two words of which the earlier rights and the disputed domain name consist (BOUYGUES CONSTRUCTIONS as compared to CONSTRUCTION BOUYGUES) would be sufficient to distinguish a domain name from a trademark. Even if such reversal were to be of relevance, it needs to be pointed out that the elements CONSTRUCTION respectively CONSTRUCTIONS are highly descriptive of the nature of the business concerned and are therefore generic. Even taking the reversal of the order of the words into the consideration, the dominant and distinctive element in both domain names would be the word BOUYGUES which is contained identically in the earlier rights and the disputed domain name.

Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under Paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see e.g. WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

The Complainant has put forward that the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant. Nor has the Respondent been granted an authorization or license to use the disputed domain name by the Complainant. This has not been contested by the Respondent. Instead, the Respondent failed to provide any information and evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of Paragraph 4(a)(ii) of the Policy).

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of Paragraph 4(a)(ii) of the Policy). The Complainant has therefore also satisfied the requirement under Paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has made use of the disputed domain name to pass itself off as a Complainant's chief purchasing officer in order to conduct a phishing scheme in order to receive monetary payments in place of the Complainant. Use of the domain name in this manner is neither a bona fide offering of goods or services nor is it non-commercial or fair use pursuant to the Policy.

A similar case was decided in FORUM Case No. 1775963, United Rentals, Inc. v. saskia gaaede / Mr where the "Complainant submit[ted] that Respondent is intending to impersonate Complainant to contact customers of Complainant, posing as a credit supervisor of Complainant, directing customers to transmit payments to a bank account not controlled by Complainant". In its decision, the Panel agreed with Complainant and finds that Respondent has does not have rights or legitimate interests in the domain name per Paragraph 4(c)(i) or (iii) of the Policy.

Prior UDRP panel decisions have established that the trademark “BOUYGUES CONSTRUCTION” is well-known. See e.g. CAC case No. 101387, BOUYGUES v. Laura Clare <bouygeus-construction.com> in which only two characters of the disputed domain name are different from the Complainant's well known registered mark.

Given the reputation of the Complainant and its trademarks, company name and domain as supported by the Complainant’s evidence, the Panel must conclude that the Respondent was fully aware of the Complainant's trademarks, domain and company name "BOUYGUES CONSTRUCTIONS at the time of registering the disputed domain name CONSTRUCTION-BOUYGUES.COM. Therefore, it has been established to the satisfaction of the Panel that the disputed domain name was registered and is being used in bad faith, in order to prevent the Complainant from making proper use of the mark in the disputed domain name.

Therefore, the Panel concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under Paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

## PANELLISTS

| Name | **Udo Pfleghar** |
|---|---|

DATE OF PANEL DECISION 2019-08-02

Publish the Decision