Decision for dispute CAC-UDRP-102808

Case number	CAC-UDRP-102808
Time of filing	2019-12-10 09:43:16
Domain names	bouygues-construction-au.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	BOUYGUES

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Anthony James

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following International registered trademark:

BOUYGUES CONSTRUCTION, word mark, registered on April 13, 2000 under number 732339 in use class 37 and designated in respect of 51 territories. The mark has proceeded to registration in respect of the vast majority of said territories.

FACTUAL BACKGROUND

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

Founded in 1952, the Complainant is a group of companies centred on construction, telecoms and media. The Complainant's group operates in 93 countries, has just under 57,000 employees, and reported net profit of over EUR 1.3 billion in 2018. The Complainant is the proprietor of the BOUYGUES CONSTRUCTION registered trademark, which mark also corresponds to the name of one of its corporate subsidiaries. Said subsidiary designs, builds and operates public and private buildings, transport infrastructures and energy and communications networks. Said subsidiary is also the registrant of the corresponding domain name <bouygues-construction.com>, registered since May 10, 1999.

According to the WhoIs record, the disputed domain name was created on November 30, 2019. It is confusingly similar to the Complainant's BOUYGUES CONSTRUCTION registered trademark, which is included in its entirety, along with the term "AU". The addition of such term, being a non-distinctive geographic indication for Australia, does not add any distinctiveness to the disputed domain name. It may lead to further confusion as it suggests that it represents an Australian operation of the Complainant's said subsidiary.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not named as the disputed domain name in the WhoIs record, indicating that it is not commonly known thereby. The Respondent is not related in any way to the Complainant's business, is neither affiliated with it nor authorized by it to use the Complainant's BOUYGUES CONSTRUCTION registered trademark, and does not carry out any activity for it or have any business with it.

The disputed domain name is being used to redirect Internet users to other commercial websites, including those of competitors of the Complainant, and to parked pages containing pay-per-click links to websites of the Complainant's competitors. Such use does not give rise to rights or legitimate interests under the Policy.

The disputed domain name has been registered and is being used in bad faith. Previous panels under the Policy have determined that the Complainant's BOUYGUES CONSTRUCTION mark is well-known. Such mark is incorporated entirely in the disputed domain name. Bad faith is further illustrated by the disputed domain name's resolution to a pay-per-click parking page with links to websites selling products in competition with the Complainant. It is well-established in past cases under the Policy that the use of such pages is strong evidence of bad faith.

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

The Panel is satisfied that the disputed domain name features the Complainant's BOUYGUES CONSTRUCTION registered trademark in its entirety together with the letters "au" and dashes or hyphens used as separators. Whether the letters "au" may be intended as a geographic indication or not, their inclusion along with the Complainant's distinctive mark does not avoid a finding of confusing similarity under the Policy. Said mark is clearly recognizable in the disputed domain name as the first and most dominant element thereof. Neither the letters "au", nor the dashes or hyphens, serve to distinguish the disputed domain name from said mark. The generic Top-Level Domain, in this case ".com", is typically disregarded for the purposes of the comparison exercise.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. The Complainant asserts that the Respondent is not commonly known by the disputed domain name, is not related in any way to the Complainant's business, is neither affiliated with it nor authorized by it to use the Complainant's BOUYGUES CONSTRUCTION registered trademark, does not carry out any activity for it or have any business with it. The Complainant asserts with reference to a screenshot featuring the disputed domain name that it is being used to redirect Internet users to other commercial websites, including those of competitors of the Complainant, and to parked pages containing pay-per-click links to websites of the Complainant's competitors. The Panel accepts the Complainant's submission that such use does not give rise to rights or legitimate interests under the Policy.

The Respondent has failed to file a Response in this case and accordingly has provided no submissions or evidence which would serve to rebut the Complainant's prima facie case. Accordingly, the Respondent having failed to rebut the Complainant's prima facie case, and there being no facts or circumstances on the present record indicating that the Respondent may otherwise have rights or legitimate interests in the disputed domain name, the Panel finds that the Respondent has no such rights or legitimate interests therein.

The Panel finds that the Complainant has established that the disputed domain name has been registered and is being used in bad faith. The disputed domain name contains the Complainant's distinctive registered trademark. Previous panels under the Policy have determined that such mark is well-known (see, for example, CAC Case No. 102793, BOUYGUES S.A. v. Rafael Vivier and CAC Case No. 101387, BOUYGUES S.A. v. Laura Clare). The registration of such mark pre-dates the creation of the disputed domain name. In these circumstances, the Panel finds that it is inconceivable that the Respondent selected the disputed domain name without knowledge of the Complainant and/or without intent to target it or its trademark.

The disputed domain name has been used in connection with pay-per-click advertising which references both the Complainant's line of business and its competitors. It is well-established in UDRP jurisprudence that such use constitutes use in bad faith even where, as here, the content may have been generated by the Respondent's domain name registrar rather than by the Respondent itself. The Respondent is nevertheless responsible for any such content appearing on the website associated with the disputed domain name.

In failing to file any Response, the Respondent has not availed itself of the opportunity to address the Complainant's contentions or to advance any explanation for the registration and use of the disputed domain name which might have indicated that its actions were in good faith. On the basis of the present record, and in the absence of such a Response, the Panel cannot conceive of any reasonable explanation which might have been tendered by the Respondent regarding the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Andrew Lothian**

DATE OF PANEL DECISION 2020-01-08

Publish the Decision