Decision for dispute CAC-UDRP-103173

Case number	CAC-UDRP-103173
Time of filing	2020-07-17 09:08:47
Domain names	buoygues-construction.com

Case administrator

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

Complainant

Organization	BOUYGUES

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	36 karatt

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

In this proceeding, the Complainant relies on the following trademark:
- International word trademark “BOUYGUES CONSTRUCTION” No.732339, registered on April 13th, 2000.

FACTUAL BACKGROUND

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

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant is a French diversified group of industrial companies organized around three sectors: construction, telecoms and media operating in nearly 90 countries.

The Complainant is a global player in construction, with operations in more than 60 countries. It designs, builds and operates projects in the sectors of building, infrastructure and industry.

The Complainant contends that the disputed domain name is confusingly similar to its trademark.

The disputed domain name was registered on June 29, 2020.

The Complainant contends that the inversion of the letters “O” and “U” is not sufficient to escape the finding that the disputed domain name is confusingly similar to its trademark and this is a case of typosquatting. The Complainant refers to decisions of previous panels in respect of the Complainant and its “BOUYGUES CONSTRUCTION” mark.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant contends that the Respondent is not known by the disputed domain name in the Whois database, and has not acquired trademark rights.

The Complainant states that the Respondent is not related in any way to the Complainant’s business. The Complainant contends that the Respondent is not affiliated with the Complainant nor authorized by the Complainant in any way to use the Complainant’s trademark. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The disputed domain name is inactive. The Complainant contends that the Respondent did not make any use of the disputed domain name since its registration, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name, except for the phishing scheme.
It demonstrates a lack of legitimate interests in respect of the disputed domain name.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant refers to previous panels that have established that the “BOUYGUES CONSTRUCTION” trademark is well-known.

According to the Complainant given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

The disputed domain name is inactive. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law.

The incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.
The Complainant also indicates that although the disputed domain name now appears to be inactive, it has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.

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

A. Identical or confusingly similar with Complainant's trademark

The Complainant owns "BOUYGUES CONSTRUCTION" international trademark effective in various jurisdictions.

As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".
The disputed domain name entirely incorporates the Complainant's trademark with a misspelling.

As stated in WIPO Overview 3.0 "a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element" (see par. 1.9).

In the present case, the Complainant's trademark is clearly recognizable in the disputed domain name and contains an obvious misspelling – inversion of the letters "o" and "u".

The .com domain zone shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.
Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:
(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.
If the respondent fails to do so, the second element of the Policy is satisfied (see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284).
The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and FORUM Case No. FA0006000095095, Vertical Solutions Management, Inc. v. webnet-marketing, inc.).

The web site under the disputed domain name is inactive.

The Complainant has made a prima facie case in respect of Respondent's lack of rights or legitimate interests, in particular absence of any affiliation, business relations or any authorization from the Complainant to use its trademark in the disputed domain name and the fact that the Respondent is not known by the disputed domain name. The Respondent failed to

respond and rebut Complainant's arguments.

In the present case there is no evidence of any possible legitimate rights or interests of the Respondent.
Moreover, the disputed domain name represents a misspelling of the Complainant's trademark.

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.
These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.
The disputed domain name is inactive.

There is a general agreement that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see par. 3.3 of WIPO Overview 3.0).

One has to look at the circumstances of a case taking into account, in particular, the nature of the domain name (e.g., a typo of a widely-known mark), the degree of distinctiveness or reputation of the Complainant's mark, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and the implausibility of any good faith use to which the domain name may be put (see e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; "Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc., WIPO Case No. D2017-0246; CAC Case No. 101435, CAC Case No. 101691, CAC Case No. 101640 and par. 3.2.1 of WIPO Overview 3.0).

Distinctiveness and high reputation of Complainant's trademark were recognized by previous panels (see e.g. CAC Case No.103120; CAC Case No.102808 – "the disputed domain name contains the Complainant's distinctive registered trademark"; CAC Case No. 102404 – "given the reputation of the Complainant and its trademarks…" ; Bouygues S.A. v. Domain Administrator, Registrant of constructions-bouygues.com (apiname com) / Lepot Charlotte, WIPO Case No. D2019-1329 and CAC Case No.101972).

The Complainant's "BOUYGUES CONSTRUCTION" mark is widely-known and distinctive and has been registered long before registration of the disputed domain name.

It is also clear that the Respondent targeted the Complainant by misspelling the Complainant's well-known mark in the disputed domain name.
As confirmed by previous panels typosquatting constitutes bad faith (see e.g. CAC Case No. 103135; CAC Case No. 102257; Wikimedia Foundation, Inc. v. Domain Admin, Whois Privacy Corp. / Ryan G Foo, PPA Media Services, WIPO Case No. D2015-1705 – "typosquatting is obvious evidence of bad faith" and CAC Case No. 103005).

Given the circumstances of this case it is hard if not impossible to imagine any conceivable good faith use of the disputed domain name by the Respondent.

Panels have also consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see par. 3.1.4 of WIPO Overview 3.0).

Taking into account all of the above it appears that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2020-08-17

Publish the Decision