Decision for dispute CAC-UDRP-103361

Case number	CAC-UDRP-103361
Time of filing	2020-10-23 09:16:31
Domain names	bouygues-constructiontps.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)

Complainant

Organization	BOUYGUES

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	ALLOUD FRANCK JEAN-CLAUDE

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the following trademark registrations:

- BOUYGUES (word mark), international registration No. 390770, originally registered on 1 September 1972, designating several countries and covering goods and services in classes 6, 19, 37 and 42;

- BOUYGUES (device mark), international registration No. 390771, originally registered on 1 September 1972, designating several countries and covering goods and services in classes 6, 19, 37 and 42;

- BOUYGUES (word mark), international registration No. 949188, originally registered on 27 September 2007, designating several countries, and covering goods and services in classes 6, 19 and 37;

- BOUYGUES CONSTRUCTION (word mark), European Union registration No. 1589159, claiming a French priority of 3 November 1999, duly renewed, covering services in class 37.

The Complainant's subsidiary, Bouygues Construction, is also the owner of a number of domain names including the

wording "bouygues construction", such as <bouygues-contruction.com>, registered on 10 May 1999 and <bouygues-tp.com> registered on 31 January 2013.

FACTUAL BACKGROUND

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

The Complainant was founded in 1952 and is a diversified group of industrial companies operating in different fields, such as building, real estate, telecoms and media. The Complainant's group employs 56,980 employees and has a net profit attributable to the group amounting to 1,184 million Euros. The Complainant's subsidiary, Bouygues Construction, is a world player in the fields of building, public works, energy and related services.

The disputed domain name was registered on 4 June 2020 and leads to a page displaying the message "www.bouygues-constructiontps.com Under Construction".

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

According to the Complainant, the disputed domain name is confusingly similar to its trademarks BOUYGUES and BOUYGUES CONSTRUCTION, as it includes them in their entirety. Moreover, the addition of a hyphen and the abbreviation "tps" are not sufficient to escape a finding that the disputed domain name is confusingly similar to the Complainant's trademarks. Indeed, "tps" is an acronym of the French wording "travaux publics" and therefore cannot change the overall impression that the disputed domain name is connected to the Complainant's trademarks.

The Complainant further contends that the Respondent does not have rights or legitimate interests in the disputed domain name. In particular, the Complainant states that the Respondent is not known by the disputed domain name in the Whois database and has not acquired trademark rights on the terms "Bouygues construction". Furthermore, the Respondent is not affiliated with the Complainant nor is authorized by the Complainant to use its trademarks. The Complainant does not carry out any activity for, nor has any business with the Respondent.
As the disputed domain name leads to an "Under Construction" page, the Complainant contends that the Respondent did not make any use of the disputed domain name since its registration and confirms that the Respondent has no demonstrable plan to use the disputed domain name except for a fishing scheme.

Lastly, the Complainant contends that the disputed domain name was registered and is being used in bad faith. In particular, according to the Complainant, the trademark BOUYGUES CONSTRUCTION is well-known. Given the distinctive character and reputation of the Complainant's trademark, the Complainant maintains that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark. In addition, the disputed domain name leads to an "under construction" page since the time of its registration. UDRP Panels have consistently held that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding.

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).

The disputed domain name fully includes the Complainant's trademark BOUYGUES CONSTRUCTION, separated by a hyphen and followed by the three letters "tps".

It is generally recognised in UDRP disputes that a confusing similarity exists every time the disputed domain name fully incorporates the Complainant's trademark. The hyphen between the elements "bouygues" and "contruction" lacks distinctive character and cannot affect the similarity of the disputed domain name with the Complainant's trademarks.
As to the three letters "tps" added to the disputed domain name, according to the Complainant, they are the acronym of "travaux publics", which is a French expression for "civil engineering". In the absence of contentions, the Panel accepts the

Complainant's argument and finds that the letters "tps" are descriptive of the Complainant's services (for similar decisions on this point see WIPO Case No. D2019-1401, Bouygues S.A. v. Rafael Vivier and WIPO Case No. D2019-1390, Bouygues S.A. v. Whois Privacy (enumDNS dba) / Rafael Vivier)). Therefore, the addition of these three letters cannot distinguish the disputed domain name from the Complainant's earlier marks.

For all the reasons mentioned above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and therefore 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).

While the overall burden of proof under the Policy proceedings rests on the complainant, it is generally recognized that, in order to prove the respondent's lack of rights or legitimate interest in the domain name, it is sufficient for the complainant to make out a prima facie case to shift the burden of proof to the respondent. This is so because proving a third party's negative fact, such as the respondent's lack of rights or legitimate interest, would otherwise result in an almost impossible task for the complainant.

In the instant case, the Panel agrees that the information listed in the relevant WhoIs does not show that the Complainant is known by the disputed domain name. Furthermore, the Complainant states that it does not have any business relationship, nor any other kind of relation with the Respondent and that it never authorized the Respondent to use its trademarks as part of the disputed domain name. Lastly, the evidence provided show that the disputed domain name leads to an "under construction" page. Therefore, the Panel could not find any trace of demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, or of a legitimate non-commercial or fair use of the disputed domain name.

The Respondent had the opportunity to rebut the Complainant's allegations but failed to do so. Therefore, the Panel accepts the Complainant's arguments as true and sufficient to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

In light of the foregoing, 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).

The Panel finds that the Complainant has proved that the Respondent acted in bad faith, in both the registration and use of the disputed domain name, for the following reasons.

The Complainant's trademarks are quite distinctive and date back to almost 40 years ago (for the trademark BOUYGUES) and to more than 20 years ago (for the trademark BOUYGUES CONSTRUCTION). In previous UDRP proceedings, the Panel found the Complainant's trademarks to be well-known (WIPO Case No. D2019-1401, Bouygues S.A. v. Rafael Vivier and WIPO Case No. D2019-1390, Bouygues S.A. v. Whois Privacy (enumDNS dba) / Rafael Vivier), CAC Case No. 101387, Bouygues v. Laura Clare). It is therefore clear that the Respondent, who is of the same nationality of the Complainant, being a French individual, was well aware of the Complainant and of its trademarks at the time of the registration of the disputed domain name. The registration of a domain name incorporating a third party's trademark without authorization and rights or legitimate interests amounts to registration in bad faith.

Regarding use in bad faith, the Panel notes that currently the disputed domain name leads to a parking page displaying the wording "under construction". The fact that this webpage is inactive cannot prevent a finding of bad faith. According to §3.3 of the WIPO Overview 3.0., "[w]hile panelists 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".

In the instant case, the Complainant's trademarks have been found to be renown and are certainly highly distinctive. Moreover, the Respondent failed to submit a response and to provide arguments and evidence of a good faith use of the disputed domain name. Thus, lacking any rights or legitimate interests in the disputed domain name, the Panel cannot think of any plausible good faith use to which the disputed domain name may be put.

In light of the above, the Panel concludes that also the third and last requirement under the Policy is met.

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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2020-12-01

Publish the Decision