

Decision for dispute CAC-UDRP-103667

Case number	CAC-UDRP-103667
Time of filing	2021-03-18 09:04:49
Domain names	bouygues-batiment.net

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	BOUYGUES
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Complainant representative

Organization	Nameshield (Enora Millocheau)
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Respondent

Name	steven babi
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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 international trademark BOUYGUES BATIMENT, registration number 723515 registered on 22 November 1999 for services in class 37 for which it has provided a print-out of the registration details.

FACTUAL BACKGROUND

The Complainant is a member of an international diversified group of companies engaged in construction, telecoms and media and owns and uses the abovementioned BOUYGUES BATIMENT in its construction business.

In addition, the Complainant also owns, through its subsidiary BOUYGUES CONSTRUCTION, a number of Internet domain names including the same distinctive wording BOUYGUES BATIMENT®, such as <bouygues-batiment.com> which was registered on 29 November 2009.

The disputed domain name <bouygues-batiment.net> was registered on 11 January 2021 and resolves to a parking page with commercial links.

There is no information available about the Respondent, who availed of a privacy service to conceal his identity on the published Whois, except for that provided in the Complaint, the Registrar's Whois and the information provided by the Registrar to the Center in response to the request for verification of the registration details of the disputed domain name in the course of this proceeding.

The Registrar confirmed that the Respondent is the registrant of the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims rights in the BOUYGUES BATIMENT mark which it acquired through its abovementioned international trademark registration details of which it has provided in an annex to the Complaint, and other registrations in which it claims rights. Complainant also claims rights in the mark accrued through its extensive use by the Complainant's group of companies in its construction business including on the Internet.

The Complainant states that it is a diversified group of industrial companies was founded by Francis Bouygues in 1952 and has grown to have a substantial reputation and goodwill in three sectors of economic activity, namely construction, telecoms and media, operating in nearly 90 countries with net profit attributable to the Group amounting to €696 million.

The Complainant asserts that the disputed domain name <bouygues-batiment.net> is composed of its BOUYGUES BATIMENT mark in its entirety and alleges that, for the purposes of the Policy, the disputed domain name is therefore identical to the Complainant's registered trademark.

The Complainant submits that the addition of the generic Top-Level Domain ("gTLD") <.net> extension is not sufficient to escape the finding that the disputed domain name is identical to the Complainant's trademark as the suffix does not change the overall impression of there being a connection between the disputed domain name its BOUYGUES BATIMENT trademark. In this regard the Complainant refers to the WIPO Overview 3.0 §1.11.1, "the applicable Top Level Domain ("TLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test".

The Complainant alleges that the Respondent has no rights or legitimate interest in the disputed domain name, adding that according to the decision of the panel in Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests in the domain name in issue. Once such prima facie case is made, the Respondent carries the burden of production to demonstrate rights or legitimate interests in the domain name. If the Respondent fails so to do, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant asserts that the Respondent is not commonly known by the disputed domain name and is not identified in the Whois database as the disputed domain name. Citing Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group, Forum Case No. FA 1781783, <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).")

The Complainant furthermore asserts that the Respondent is not affiliated with, nor authorized by, the Complainant in any way, nor does the Respondent carry out any activity for, or have any business with the Complainant.

The Complainant adds that no license nor authorization has been granted to the Respondent to make any use of the Complainant's BOUYGUES BATIMENT mark, or apply for registration of the disputed domain name by the Complainant.

Referring to a screen-capture of the website to which the disputed domain name resolves, which has been exhibited in an annex to the Complaint, the Complainant contends that as the disputed domain name is not being used to make a bona fide offering of

goods or services or for any legitimate non-commercial or fair use as it resolves to a parking page with commercial links. Citing *Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe* WIPO Case No. D2007-1695 ("Respondent's use of a domain name confusingly similar to Complainant's trademark for the purpose of offering sponsored links does not of itself qualify as a bona fide use.").

The Complainant also alleges that the disputed domain name was registered and is being used in bad faith because it consists of Complainant's well-known registered trademark, the Respondent had actual and constructive knowledge of the Complainant's rights and it is being used for the purposes of domain parking.

The Complainant argues that its distinctive trademark BOUYGUES BATIMENT is well-known throughout the world, as can be illustrated by the results of a search on GOOGLE's search engine which have been presented in an annex to the Complaint.

The Complainant contends therefore that the registrant of the disputed domain name, which is identical to its mark and its associated domain name <bouygues-batiment.com>, must have had actual and constructive knowledge of the Complainant's registered mark and the reputation of its business when the disputed domain name was registered. Citing *BOUYGUES v. 1&1 Internet Limited* <bouygues-batiments-ile-de-france.com> CAC Case No. 101586, ("The Respondent registered the Disputed domain name with full knowledge of the Complainant's well-known trademark [BOUYGUES BATIMENT].").

The Complainant adds that consequently, given Respondent's knowledge of the Complainant, the distinctiveness of its trademark and its goodwill and reputation, it is reasonable to infer that the Respondent is using the disputed domain name with full knowledge of the Complainant and its mark.

As the aforementioned screen-capture of the web page to which the disputed domain name resolves shows, the disputed domain name is being used as the address of a parking page with commercial links.

The Complainant argues that the screen-capture proves that the disputed domain name is being used by the Respondent in an attempt to attract Internet users for commercial gain to the Respondent's website for its own commercial gain. The Complainant submits that this amounts to bad faith use of the disputed domain name for the purposes of the Policy. Citing for instance *StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC* WIPO Case No. D2018-0497 ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

RESPONDENT:

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 Complainant has provided clear, convincing and uncontested evidence that it has rights in the BOUYGUES CONSTRUCTION mark acquired through its ownership of its abovementioned trademark registration and its use of the mark in its construction business.

The disputed domain name <bouygues-batiment.net> is composed of the two words that constitute the entirety of the Complainant's BOUYGUES BATIMENT mark separated only by a hyphen, in combination with the gTLD <.net> extension.

The Complainant's distinctive trademark is the dominant element of the disputed domain name. Neither the hyphen, nor the gTLD extension contribute any distinguishing character to the disputed domain name and in the circumstances of this case, the gTLD extension would in fact be considered to be a necessary technical element for a domain name.

This Panel finds therefore that the disputed domain name is identical and confusingly similar to the BOUYGUES BATIMENT mark in which the Complainant has rights. The Complainant has therefore succeeded in the first element of the test in Policy paragraph 4(a)(i).

The Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name submitting that

- the Respondent is not commonly known by the disputed domain name;
- the Respondent is not identified in the Whois database as the disputed domain name;
- the Respondent is neither affiliated with, nor authorized by, the Complainant in any way;
- the Respondent does not carry out any activity for, nor have any business with the Complainant;
- no license nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's BOUYGUES BATIMENT mark, or apply for registration of the disputed domain name;
- the screen-capture of the website to which the disputed domain name resolves, which has been exhibited in an annex to the Complaint, shows that the disputed domain name resolves to a parking page with commercial links and therefore is not being used to make a bona fide offering of goods or services or for any legitimate non-commercial or fair use.

It is well established that once a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in a domain name in issue, the burden of production shifts to the respondent to prove the existence of such rights or interests.

Respondent has not discharged the burden of production. This Panel must therefore find that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has therefore succeeded in the second element of the test in Policy paragraph 4(a)(ii).

The Complainant has shown that its trademark BOUYGUES BATIMENT is well known and extensively used by the Complainant in its construction business including on the Internet. The disputed domain name is almost identical to the Complainant's distinctive mark as well as the Complainant's own identical domain name <bouygues-batiment.com>, albeit on a different gTLD, which has been registered since 29 November 2009.

The disputed domain name <bouygues-batiment.net> was registered on 11 January 2021 long after the Complainant established its rights in its mark and registered its identical domain name on the <.com> gTLD.

It is improbable therefore that the registrant chose and registered the disputed domain name, which is so similar to the Complainant's distinctive mark, without knowledge of the Complainant, its mark and business.

This Panel finds therefore that on the balance of probabilities the disputed domain name was chosen and registered with the Complainant's mark in mind, in order to take predatory advantage of the Complainant's goodwill and reputation in the BOUYGUES BATIMENT mark for unauthorized commercial gain.

The screen-capture of the web page to which the disputed domain name resolves, shows that the Respondent is using the disputed domain name as the address of a parking page with commercial links. In the circumstances described above, on the balance of probabilities the Respondent is causing, permitting or allowing the disputed domain name to be used in bad faith as the address of a website taking predatory advantage of the Complainant's name, mark and goodwill in order to attract Internet traffic and to divert Internet users to the Respondent's website for commercial gain.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, the Complainant has also succeeded in the third elements of the test in Policy paragraph 4(a)(iii) and is entitled to the reliefs sought in the Complaint.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGUES-BATIMENT.NET**: Transferred

PANELLISTS

Name	Mr James Jude Bridgeman
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DATE OF PANEL DECISION 2021-04-09

Publish the Decision
