

Decision for dispute CAC-UDRP-103669

Case number	CAC-UDRP-103669
Time of filing	2021-03-18 09:02:39
Domain names	bouygues-constructions.net

Case administrator

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

Organization	BOUYGUES
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Complainant representative

Organization	Nameshield (Enora Millocheau)
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Respondent

Organization	steven koffi
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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

BOUYGUES S.A. (the Complainant) is a diversified group of industrial companies centred on three sectors of activity: construction, with Bouygues Construction, Bouygues Immobilier, and Colas; and telecoms and media, with French TV channel TF1 and Bouygues Telecom. Operating in nearly 90 countries, the Complainant's net profit attributable to the Group amounted to 696 million euros.

Its subsidiary BOUYGUES CONSTRUCTION is a world player in the fields of building, public works, energy, and services. As a global player in construction and services, BOUYGUES CONSTRUCTION designs, builds and operates buildings and structures which improve the quality of people's living and working environment: public and private buildings, transport infrastructures and energy and communications networks.

The Complainant states and provides evidence to support, that it is the owner of a portfolio of trademarks BOUYGUES CONSTRUCTION, such as the international trademark BOUYGUES CONSTRUCTION, n° 732339 registered since April 13, 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 10, 1999.

The disputed domain name <bouygues-constructions.net> was registered on February 18, 2021.

FACTUAL BACKGROUND

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

The Complainant draws Panel attention to previous UDRP decisions:

- WIPO Case No. D2014-1859, Dr. Ing. h.c. F. Porsche Aktiengesellschaft v. John Smith, finding that “Pluralizing Complainant’s trademark does not avoid the confusing similarity between the disputed domain name and the mark.”;
- Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> finding that “Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group, finding that under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).”;
- Forum Case No. FA 970871, Vance Int’l, Inc. v. Abend, finding that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees;
- WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe, finding that “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.”;
- CAC case No. 101387, BOUYGUES v. Laura Clare <bouygeus-construction.com> finding that, “Here only two characters of the disputed domain name are different from the Complainant’s well known registered mark [BOUYGUES CONSTRUCTION]”.
- WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC, finding that “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.”

PARTIES' CONTENTIONS:

COMPLAINANT:

I. The disputed domain name is confusingly similar to the protected mark

According to the Complainant, the disputed domain name <bouygues-constructions.net> is confusingly similar to the BOUYGUES CONSTRUCTION mark as the domain name fully incorporates the BOUYGUES CONSTRUCTION mark, adding a hyphen and the letter "s" at the end of the term "CONSTRUCTION". The Complainant claims that it does not change the overall impression of the designation as being connected to the Complainant’s trademark BOUYGUES CONSTRUCTION. Also, that it does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated.

II. The Respondent does not have any rights or legitimate interest in the disputed domain name

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOUYGUES CONSTRUCTION, or apply for registration of the disputed domain name by the Complainant.

Finally, the Complainant provides that the disputed domain name resolves to a parking page with commercial links and concludes that there is no evidence for a right or legitimate interest of the Respondent in respect of the disputed domain name.

III. The disputed domain name has been registered and is being used in bad faith

According to the Complainant, the Respondent has registered and is using the disputed domain name in bad faith. The Complainant states that the disputed domain name is confusingly similar to its well-known and distinctive trademark and the domain name associated.

The Complainant further states that given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends that the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is evidence of bad faith.

PARTIES CONTENTIONS

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 UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the “Policy”) provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent’s domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith.

1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Complainant has provided evidence and proved to be the owner of a trademark BOUYGUES CONSTRUCTION.

The Panel finds that the disputed domain name <bouygues-constructions.net> fully incorporates the Complainant’s BOUYGUES CONSTRUCTION trademark. Essentially, the Respondent has appropriated the trademark BOUYGUES CONSTRUCTION by adding a hyphen between the terms “BOUYGUES” and “CONSTRUCTION” and the letter “s” at the end of the term “CONSTRUCTION” to presumably lead consumers to believe that it is affiliated with the Complainant. Previous UDRP panels have found that the fact that a domain name wholly incorporates a complainant’s registered mark is sufficient to establish identity or confusing similarity for the purposes of the Policy (see, e.g., Oki Data Americas Inc. v ASD, Inc., WIPO Case No. D2001-0903).

Additionally, the disputed domain name not only fully incorporates the BOUYGUES CONSTRUCTION trademark but also includes a purely generic top-level domain (“gTLD”) “net”. Previous UDRP panels have also held that the gTLD “.net” is not to be taken into account when assessing whether a domain name is identical or confusingly similar to a trademark. See e.g., Wiluna Holdings, LLC v. Edna Sherman, FA 1652781 (Forum January 22, 2016). Moreover, the “use or absence of punctuation marks, such as hyphens, does not alter the fact that a name is identical to a mark.”

The Panel finds that the disputed domain name <bouygues-constructions.net> shows a clear visual, phonetic and conceptual resemblance to the Complainant’s BOUYGUES CONSTRUCTION trademark, and could confuse Internet users into thinking that the disputed domain name is associated with the Complainant or its trademarks.

In these circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark BOUYGUES CONSTRUCTION.

2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the BOUYGUES CONSTRUCTION mark as part of its domain name. The disputed domain name resolves to a parking page with commercial links. The Respondent is not in any way affiliated with the Complainant, nor is it authorized to register the disputed domain name. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

In a present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or

legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

3) The disputed domain name has been registered and is being used in bad faith

The Panel agrees with the Complainant that its trademark BOUYGUES CONSTRUCTION is distinctive and well-known globally. The registration of the Complainant's well-known trademark BOUYGUES CONSTRUCTION predates the registration of the disputed domain name. The Panel finds that there appears no reason why the Respondent would register the Complainant's trademark as part of the disputed domain name, other than to create the impression that it is connected to the Complainant's business. Given the distinctiveness and reputation of the Complainant's trademark worldwide, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

The fact that the Respondent has registered the disputed domain name that is confusingly similar to them indicates and in the absence of any evidence contrary (or any administratively compliant response at all) being put forward by the Respondent, that the Respondent, according to this Panel, had knowledge of the Complainant's trademark and that it had such knowledge before the registration and use of the disputed domain name.

Further, the disputed domain name resolves to a parking page with commercial links. The Panel thus takes the view that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or location by creating a likelihood of confusion with the Complainant's mark. This further suggests that the Respondent's sole intention in registering the disputed domain name was to take unfair advantage of the Complainant's BOUYGUES CONSTRUCTION trademark and reputation, and suggests registration and use in bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied the third element of the Policy, that is that the Respondent's registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	Mgr. Barbora Donathová, LL.M.
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DATE OF PANEL DECISION	2021-04-22
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Publish the Decision
