Decision for dispute CAC-UDRP-103665

Case number	CAC-UDRP-103665
Time of filing	2021-03-18 09:01:33
Domain names	bouygues-construction.cam

Case administrator

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

Complainant

Organization	BOUYGUES

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	marines supply Inc

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

Founded by Francis Bouygues in 1952, BOUYGUES S.A. (the Complainant) is a diversified group of industrial companies structured by a strong corporate culture. Its businesses are centered 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 (please see their website at http://www.bouygues-construction.com.

FACTUAL BACKGROUND

As leader in sustainable construction, the Group and its 58,000 employees have a long-term commitment to helping their customers shape a better life.

The Complainant is also the owner of several 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-construction.cam> was registered on January 11, 2021 and resolves to a parking page with commercial links.

Accordingly, a simple comparison of Complainant's Mark's and the disputed domain name demonstrates that the two are confusingly similar. Therefore, Complainant has established the first element of the Policy under paragraph 4(a).

The Respondent does not use, and has not used, the disputed domain name in connection with a bona fide offering of goods or services.

Respondent is not commonly known by the disputed domain name.

There is no evidence that Respondent is commonly known by the disputed domain name.

Respondent does not use the disputed domain name for any legitimate or non-commercial fair use.

The Complainant states that the disputed domain name <bouygues-construction.cam> is identical to its trademark BOUYGUES CONSTRUCTION®. Indeed, the domain name includes it in its entirety.

The Complainant contends that addition of the new gTLD suffix ".CAM" is not sufficient to escape the finding that the disputed domain name is identical to the Complainant's trademark and does not change the overall impression of the designation as being connected to its trademark.

Indeed, as reminded in the WIPO Overview 3.0 §1.11.1, "the applicable Top Level Domain ("TDL") 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".

Previous panels confirmed the right of the Complainant:

- WIPO Case No. D2020-3393, Bouygues v. Eric Bouret <bouygues-constructions-sa.com>;

- CAC Case No. 103458, BOUYGUES v. BOUCHON MARLENE <sa-bouygues-construction.com>;

- CAC Case No. 103173, BOUYGUES v. 36 karatt <buoygues-construction.com>.

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).

The Complainant states that the disputed domain name <bouygues-construction.cam> is identical to its trademark BOUYGUES CONSTRUCTION®. Indeed, the domain name includes it in its entirety.

The Complainant contends that addition of the new gTLD suffix ".CAM" is not sufficient to escape the finding that the

disputed domain name is identical to the Complainant's trademark and does not change the overall impression of the designation as being connected to its trademark.

Indeed, as reminded in the WIPO Overview 3.0 §1.11.1, “the applicable Top Level Domain (“TDL”) 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”.

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).

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.

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).

Given the distinctiveness of the trademark and the content of its website, it is clear that the Respondent registered the disputed domain name in knowledge of the Complainant and its trademark.

All these elements lead to the conclusion that the Respondent has intentionally attempted to attract Internet users to the Respondent´s website for commercial gain by creating a likelihood of confusion with the Complainant´s trademarks as to the source, sponsorship, affiliation, or endorsement of such websites.

Furthermore, the disputed domain name resolves to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use:

- Forum Case No. FA 970871, Vance Int’l, Inc. v. Abend (concluding 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 ("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.").

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

ii. the Respondent has no rights or legitimate interests with respect to the disputed domain name; and

iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant has clearly proven that it is a long standing and successful industrial company. It is clear that its trademarks and domain names “BOUYGUES” are well-known.

The Complainant states that the disputed domain name is confusingly similar to its trademark. Indeed, the trademark is incorporated in its entirety in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) It has to be stressed that it was proven that there are no fair rights of the Respondent to the disputed domain name. The Respondent is not generally known by the disputed domain name and has not acquired any trademark or service mark rights in the name or mark.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) The disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder. Therefore there cannot be seen any legitimate interest of the Respondent.

It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered and used. It is therefore concluded that the disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGUES-CONSTRUCTION.CAM**: Transferred

PANELLISTS

Name	**Dr. Vít Horáček**

DATE OF PANEL DECISION 2021-04-28

Publish the Decision