

Decision for dispute CAC-UDRP-103875

Case number	CAC-UDRP-103875
Time of filing	2021-06-21 10:07:10
Domain names	bouygues-construction-fr.com

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

Name	Stuart Lee
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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 owner of the international trademark (word) BOUYGUES CONSTRUCTION no. 732339, registered since 13 April 2000, in class 37.

Through its subsidiary conducting business under the trade name Bouygues Construction, the Complainant also owns the domain name <bouygues-construction.com>, registered since 10 May 1999.

FACTUAL BACKGROUND

Founded by Francis Bouygues in 1952, 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 over 80 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. As leader in sustainable construction, the Complainant and its 58,000 employees have a long-term commitment to helping their customers shape a better life.

The disputed domain name was registered by Stuart Lee on 29 May 2021 and resolves to a parking page with commercial links.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

Complainant:

The Complainant contends that the disputed domain name is confusingly similar to the BOUYGUES CONSTRUCTION trademark, since it fully reproduces such earlier mark combined with the non-distinctive letters "FR" and the TLD ".COM".

The Complainant also contends that the Respondent has no rights or legitimate interests to the disputed domain name. The disputed domain name resolves to a parking page with PPC links. That is not a good faith or fair use of the domain name, without intent for commercial gain to mislead consumers or to tarnish the Complainant's mark.

The Complainant finally contends that the Respondent's bad faith is demonstrated by the registration of the disputed domain name confusingly similar to the well-known BOUYGUES CONSTRUCTION trademark and by the use of the same to resolve to a parking page. Indeed, the Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademark for its own commercial gain, which is an evidence of bad faith.

The Complainant, therefore, requests the transfer of the disputed domain name.

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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

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

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

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

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in a registered trademark "BOUYGUES CONSTRUCTION" since 2000.

The disputed domain name consists of the terms "BOUYGUES" and "CONSTRUCTION", plus the letters "FR", separated by hyphens and the TLD ".COM".

In UDRP cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognisable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the first element (see 1.7 WIPO Overview 3.0). Panels also agree that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) and letters does not prevent a finding of confusing similarity under the first element (see 1.8 WIPO Overview 3.0).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, since it incorporates the entirety of the BOUYGUES CONSTRUCTION trademark, and differs from such mark by merely adding the letters "FR", hyphens and the TLD ".COM". The addition of such letters and hyphens neither affects the attractive power of the BOUYGUES CONSTRUCTION trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark. The TLD is to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of registration (see 1.11.1 WIPO Overview 3.0).

Hence, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's trademark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that the complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the respondent (see 2.1 WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.>").

The disputed domain name was registered by Stuart Lee, residing in the UK. The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name resolves to a parking page with pay-per-click (PPC) links related to the Complainant's services (construction). PPC links are a common way to monetise a domain name as part of an affiliate program which enables the registrant to earn a fee each time an Internet user clicks on the links of the parking page.

Applying UDRP paragraph 4(c), UDRP panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalise on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (see 2.9 WIPO Overview 3.0).

Therefore, the Panel finds that the use of the disputed domain name is clearly not a legitimate non-commercial or fair use, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

The Complainant has sufficiently demonstrated to be owner of the BOUYGUES CONSTRUCTION trademark, registered prior to the registration of the disputed domain name.

The disputed domain name is confusingly similar to Complainant's BOUYGUES CONSTRUCTION trademark, since it incorporates the entirety of such mark and differs from the latter by merely adding the letters "FR", hyphens and the TLD ".COM" which are insufficient to negate the confusing similarity of the disputed domain name to the Complainant's mark.

Given the good-will and reputation of the Complainant acquired over the years in the construction industry, it is inconceivable that the Respondent could have registered the disputed domain name for a mere chance without actual knowledge of the Complainant and its mark and the intention to exploit such reputation for commercial gain by diverting traffic away from the Complainant's website. Even assuming that the Respondent had no knowledge of the Complainant's prior mark at the time of registration of the disputed domain name (which is quite unlikely), it omitted to verify that the disputed domain name would have infringed the Complainant's earlier rights or, even worse, it verified it and deliberately proceeded with the infringing registration and use.

Moreover, the disputed domain name resolves to a parking page with PPC links. While the sale of traffic (i.e. connecting domain names to parking pages and earning click-per-view revenue) does not in and of itself constitute bad faith, in the present case, considering that the website associated to the disputed domain name contains PPC links related to the Complainant's services (construction), the Panel finds that, by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark.

Finally, the Respondent has failed to submit a Response in the present administrative proceeding or to provide any evidence of actual or contemplated good faith use.

Considering all the afore-mentioned circumstances, the Panel determines that the disputed domain name has been registered and is being used in bad faith.

Therefore, the disputed domain name is to be transferred to the Complainant.

Accepted

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

1. BOUYGUES-CONSTRUCTION-FR.COM: Transferred
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PANELLISTS

Name	Avv. Ivett Paulovics
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DATE OF PANEL DECISION 2021-07-19

Publish the Decision
