

Decision for dispute CAC-UDRP-103874

Case number	CAC-UDRP-103874
Time of filing	2021-06-21 10:08:16
Domain names	bouyguesbatiment.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	paul polin
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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 the following trademark registrations for the sign “BOUYGUES BATIMENT” (the “BOUYGUES BATIMENT trademark”):

- the International trademark BOUYGUES BATIMENT with registration No.723515, registered on 22 November 1999 for services in International Class 37; and
- the European Union trademark BOUYGUES BATIMENT with registration No.001217223, registered on 25 July 2000 for services in International Class 37.

FACTUAL BACKGROUND

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

The Complainant was founded in 1952. It is a diversified group of industrial companies in the sectors of construction, telecoms and media, which operate in 81 countries and have 129 000 employees. The net profit of the group for 2020 amounted to EUR

696 million.

The Complainant's subsidiary BOUYGUES CONSTRUCTION S.A. is the owner of the domain name <bouygues-batiment.com>, registered on 29 November 2009.

The Respondent registered the disputed domain name on 10 June 2021. It resolves to a parking webpage with commercial links.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the disputed domain name is identical to the Complainant's distinctive and well-known BOUYGUES BATIMENT trademark, because it reproduces the trademark in its entirety.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant submits that it has never authorized the Respondent to use the BOUYGUES BATIMENT trademark, the Respondent is not commonly known by the disputed domain name and is not making any fair or non-commercial use of it. The disputed domain name resolves to a parking page with commercial links, which does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It points out that it carries out activities around the world and that the BOUYGUES BATIMENT trademark is distinctive and well known, so the Respondent must have registered the disputed domain name with knowledge of the Complainant's trademark. The Complainant submits that the disputed domain name resolves to a parking page with commercial links, and the Respondent attempts to attract Internet users for commercial gain to his own website by exploiting the popularity of the Complainant's trademarks.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the respondent has registered and is using the domain name in bad faith.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the BOUYGUES BATIMENT trademark. The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.net” gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence “bouyguesbatiment”, which reproduces the BOUYGUES BATIMENT trademark in its entirety, omitting only the space between the two words that comprise the trademark.

In view of the above, the Panel finds that the disputed domain name is identical to the BOUYGUES BATIMENT trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because the Respondent was not authorized to use the BOUYGUES BATIMENT trademark and is not commonly known under the disputed domain name. The Complainant also points out that the disputed domain name resolves to a parking webpage containing commercial links. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not provided an explanation of its actions related to the disputed domain name.

In the Panel’s view, the circumstances of this case support the prima facie case made by the Complainant. The disputed domain name is identical to the BOUYGUES BATIMENT trademark and resolves to a webpage containing third party commercial links. In the lack of any arguments or evidence to the contrary, the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant’s BOUYGUES BATIMENT trademark, has registered the disputed domain name targeting this trademark in an attempt to exploit its goodwill by confusing and attracting Internet users who may believe that the disputed domain name is affiliated to the Complainant, and then expose them

to third party commercial links.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The registration of the distinctive BOUYGUES BATIMENT trademark significantly predates the registration date of the disputed domain name. It is identical to this trademark, which may lead Internet users to believe that it is affiliated to the Complainant. The disputed domain name resolves to a webpage with third part commercial links, and in the absence of an authorization by the Complainant and the lack of any plausible explanation of its choice of domain name, the Panel accepts as more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant’s trademark and with the intention of taking advantage of its goodwill to attract Internet users to the associated website where they would be exposed to third party commercial links.

This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGUESBATIMENT.NET**: Transferred

PANELLISTS

Name	Assen Alexiev
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DATE OF PANEL DECISION	2021-07-20
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Publish the Decision
