

Decision for dispute CAC-UDRP-104071

Case number	CAC-UDRP-104071
Time of filing	2021-10-12 09:13:33
Domain names	bouygues-construct.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 S.A.S.
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Respondent

Name	Bouchon Marlene
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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 several registered trade marks for the word, BOUYGUES, such as the international mark BOUYGUES n° 390771 registered on 1 September 1972 and the French national mark BOUYGUES, n° 1197244 registered on 4 March 1982. The Complainant is also the owner of several marks for BOUYGUES CONSTRUCTION, such as the international mark BOUYGUES CONSTRUCTION n°732339 registered on 13 April 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 on 10 May 1999.

FACTUAL BACKGROUND

Founded in France in 1952, BOUYGUES S.A. (the Complainant) is a diversified group of industrial companies focusing on construction (Bouygues Construction, Bouygues Immobilier, and Colas) and telecoms and media (French TV channel TF1 and Bouygues Telecom). The 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, both public and private buildings, transport infrastructures and energy and communications networks. The Group operates in over 80 countries, and has some 58,149 employees and recently reported

net profit attributable to the Group in the amount of 696 million euros.

The disputed domain name <bouygues-construct.net> was registered on 23 September 2021 and resolves to a parking page with commercial links.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name <bouygues-construct.net> is confusingly similar to its trademark BOUYGUES. Indeed, the trademark BOUYGUES is included in its entirety. The Complainant contends that the addition of the term "CONSTRUCT" and the GTLD ".net" is not sufficient to change the overall impression of the designation as being connected to the Complainant's trademark BOUYGUES CONSTRUCTION. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated. On the contrary, the addition of the term "CONSTRUCT" refers to the Complainant's trademark BOUYGUES CONSTRUCTION and the Complainant's subsidiary BOUYGUES CONSTRUCTION. It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". See WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin. Thus, the disputed domain name <bouygues-construct.net> is confusingly similar to the Complainant's trademark BOUYGUES CONSTRUCTION.

Rights and/or Legitimate Interests

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

According to the WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd., a Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. See for instance 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> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).") 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, or apply for registration of the disputed domain name by the Complainant. 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.

Complainant refers to:

- 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 rights or legitimate interests in respect of the disputed domain name.

BAD FAITH

The Complainant says that the disputed domain name <bouygues-construct.net> is confusingly similar to its well-known and distinctive trademarks and the domain name associated. Past panels have confirmed the notoriety of the trademarks BOUYGUES® and BOUYGUES CONSTRUCTION.

Complainant refers to:

- CAC Case No. 103800, BOUYGUES v. ERIC DENIS <bouyges-travaux.com> ("The Panel infers, due to the notoriety of the Complainant's mark that the Respondent registered the disputed domain name with actual knowledge of the Complainant's rights in the BOUYGUES mark and finds that it registered the disputed domain name in bad faith per paragraph 4(a)(iii) of the Policy.");

- CAC case No. 101387, BOUYGUES v. Laura Clare <bouygeus-construction.com> ("Here only two characters of the disputed domain name are different from the Complainant's well known registered mark BOUYGUES CONSTRUCTION).

Besides, the Complainant and its subsidiary BOUYGUES CONSTRUCTION are well-known, as BOUYGUES CONSTRUCTION is a world player in the fields of building, public works, energy, and services (as evidenced by website at <http://www.bouygues-construction.com/>). Thus, the Respondent should have known about the Complainant at the time of the registration of the disputed domain name. The disputed domain name resolves to a parking page with commercial links. The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith. Please see for instance WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC ("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."). Accordingly, the Respondent has registered and is using the disputed domain name 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 made an application at WIPO under the Madrid Protocol for international trademark protection for BOUYGUES CONSTRUCTION, based on its French mark by application n°732339 and was registered in 48 countries including the major nations of the world such as the UK and US and most of the EU members and beyond. There is no question that the Complainant has rights in the name and mark BOUYGUES CONSTRUCTION. The Complainant says the disputed domain name <bouygeus-construct.net> is highly similar to its international trademark BOUYGUES CONSTRUCTION and lacks only the 'ion'. The gTLD suffix being irrelevant to the similarity analysis. 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).

By paragraph 4(a)(ii) of the Policy, a Complainant must prove that the Respondent has no rights or legitimate interests in respect of the domain name. The non-exhaustive grounds upon which it may rely are set out in paragraph 4(c) of the Policy and so the following may evidence rights or legitimate interests: (i) a bona fide offering of goods or services; (ii) being commonly known by the name; and (iii) making legitimate non commercial or fair use of the domain name. This element is therefore part of the Complainant's burden, see WIPO case No. D2003-0455, "Croatia Airlines v. Modern Empire Internet Ltd." (a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy) and WIPO case No. D2004 -0110 (belupo.com) (same). The Respondent has not come forward to assert rights or interests and does not on the face of the facts have any rights or legitimate interest in the disputed domain name. No use can be bona fide where a domain name was selected to create and capitalize on confusion and trade on the reputation of the trade mark owner or to impersonate the owner. Typosquatting is a form of impersonation. This is not consistent with honest or fair or legitimate use. Bettinger, Domain Name Law and Practice, Second Ed. p.1383, para. III.E.302. See also WIPO case No. D2009-1091 (dyson24-7.com). 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 Bad Faith criteria under the Policy is illustrated in in paragraph 4(b)(i) -(iv) which has a non-exhaustive list of recognised forms of Bad Faith. These include registered primarily for: (i) sale etc. to the Complainant, (ii) as a blocking registration, (iii) for disrupting the business of a competitor, or (iv) intentionally to attract for commercial gain, internet users to the respondent's site or location by creating a likelihood of confusion with the complainant's mark etc. Here only three characters of the disputed domain name are different from the Complainant's well known registered mark –the 'ion' is missing from construction. The Respondent has not come forward with any explanation and has on the face of it, no rights or interests in the name. This is a case of blatant and overt typosquatting. No use can be bona fide where a domain name was selected to create and capitalize on confusion and trade on the reputation of the trade mark owner or to impersonate the owner. Typosquatting is a form of impersonation. This is not consistent with honest or fair or legitimate use. Bettinger, Domain Name Law and Practice, Second Ed. p.1383, para. III.E.302. See also WIPO case No. D2009-1091 (dyson24-7.com). It is a case of paradigm bad faith registration and use to divert traffic to the disputed domain name. See CAC case No. 100549 (remeymartin.com), WIPO case No. D2011-0003 (allsatate.com) and CAC case No. 100666 (cetaphyl.com). Typosquatting also indicates that the Respondent was aware of the Complainant at the time of registration, see WIPO case No. 2010 -1414 (wwwvaletwaste.com) and Typosquatting is a known category of disruption. See Bettinger, Domain Name Law and Practice, Second Ed. p.1426, para. III.E. 401. Further, this is paradigm typosquatting and so the Panel finds.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGUES-CONSTRUCT.NET**: Transferred
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PANELLISTS

Name	Victoria McEvedy
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DATE OF PANEL DECISION **2021-11-16**

Publish the Decision
