

Decision for dispute CAC-UDRP-104115

Case number	CAC-UDRP-104115
Time of filing	2021-11-02 08:46:14
Domain names	bouygues-construction.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 S.A.S.
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Respondent

Organization	AMKATA Kayamata company
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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 trademarks BOUYGUES CONSTRUCTION, such as the international trademark BOUYGUES CONSTRUCTION n°732339 registered since April 13, 2000.

Previous panels have confirmed the right of the Complainant. For example:

- 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>.

FACTUAL BACKGROUND

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

The Complainant contends that the disputed domain name <bouygues-construction.com> is confusingly similar to its trademark BOUYGUES CONSTRUCTION. Indeed, the trademark BOUYGUES CONSTRUCTION is included in its entirety.

The Complainant contends that the addition of the letter “l” and a hyphen in the trademark BOUYGUES CONSTRUCTION is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark BOUYGUES CONSTRUCTION. It does not 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.

Thus, this is a clear case of typosquatting, as the disputed domain name contains an obvious misspelling of the Complainant’s trademark. It is well established that the slight spelling variations does not prevent a disputed domain name from being confusingly similar to the Complainant’s trademark. See WIPO Jurisprudential Overview 3.0, 1.9 (“A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”).

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).

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 asserts that the Respondent is not identified in the Whois database as the disputed domain name, but as “AMKATA Kayamata company”. 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 CONSTRUCTION®, or apply for registration of the disputed domain name by the Complainant.

Moreover, the disputed domain name and resolves to a page with information pertaining to the open-source computing platform “CentOS Linux”. The Complainant contends that the Respondent used the dispute domain name in a way that fails to confer rights and legitimate interests.

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 Complainant's trademarks, it is reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark.

Furthermore, the misspelling in the domain name proves the disputed domain name was intentionally registered because it is confusingly similar to the Complainant's trademarks. Previous UDRP panels have seen such actions as evidence of bad faith. See for instance Forum case no. FA 877979, Microsoft Corp. v. Domain Registration Philippines (finding bad faith registration and use of the <microsofsoft.com> domain name as it merely misspelled the complainant's MICROSOFT mark.).

Moreover, the disputed domain name and resolves to a page with information pertaining to the open-source computing platform "CentOS Linux". The Complainant asserts that such use disrupts the Complainant's business. See also WIPO Case No. D2021-0653, FXCM Global Services, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Soy Cao ("The bad faith finding also results from the alternate use of the disputed domain name without "www", which leads to a page advertising the open-source computing platform "CentOS Linux", a service completely unrelated to the Complainant. Such use disrupts the Complainant's business.").

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

This is a clear case of typosquatting, as the disputed domain name contains an obvious misspelling of the Complainant's distinctive trademark, is not being used for any legitimate purpose, and was clearly registered and is being 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. **BOUYGUES-CONSTRUICTION.COM**: Transferred

PANELLISTS

Name	Mike Rodenbaugh
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DATE OF PANEL DECISION 2021-11-30

Publish the Decision
