

Decision for dispute CAC-UDRP-104096

Case number	CAC-UDRP-104096
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Time of filing	2021-10-26 09:10:15
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Domain names	bougues-es.com
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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	Fundacion Comercio Electronico
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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 for BOUYGUES, such as the international trademark BOUYGUES n° 390771 registered since September 1, 1972 in classes 6, 19, 37 and 42.

FACTUAL BACKGROUND

The Complainant was founded in 1952 and is a diversified group of industrial companies active in the fields of construction, real estate, telecommunication and media, and is operating in over 80 countries. Complainant's net profit attributable to the Group amounted to 696 million euros in 2020. One of its subsidiaries is BOUYGUES ENERGIES & SERVICES is specialised in designing, building, maintaining and operating infrastructure, buildings and industrial facilities.

The Complainant, despite its trademarks, as mentioned above, also owns, through its subsidiary, a number of domain names including the same distinctive wording "BOUYGUES" such as <bouygues-es.com>, registered since October 26, 2012.

The disputed domain name was registered on October 5, 2021 and resolves to a parking page with commercial links to the Complainant, and other links.

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).

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

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (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.

A. Identical or Confusingly Similar

The Complainant has established the fact that it has valid trademark rights for “BOUYGUES”.

The disputed domain name differs in its second level domain by the letter „y“ in the middle of the first element of the second level domain name and in the 2nd part of the second level domain by the letters „es“ following the hyphen. Whereas the last part of the second level domain, i.e. „-es“, may be understood as further geographical identifier for „Spain“ and has, in view of the panel, accordingly no relevant influence on the similarity, the difference in the additional letter „y“ in the trademark of the Complainant lowers somehow the similarity of signs, but does not completely eliminate it. As a result, the disputed domain name is still confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks or designations confusingly similar to its trademarks. Furthermore, the Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the name “Bougues-es” or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

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

C. Registered and Used in Bad Faith

The Complainant's prior registrations and longstanding use of the "BOUYGUES" trademark suggest that the Respondent registered the disputed domain name with full knowledge of the Complainant and of its "BOUYGUES" trademark. Also in view of the far reaching presence of the Complainant on the world markets, it is the Panel's view that the Respondent was aware of the Complainant's trademark when he registered the disputed domain name.

The Respondent parked the disputed domain name offering inter alia links in relation with the Complainant and its activity and other commercial links. This indicates the Respondent's primary purpose to benefit from the Complainant's goodwill in the "BOUYGUES" trademark. The existence of Complainant's highly similar prior domain name <bouygues-es.com> underlines the knowledge of the Respondent of the Complainant and the bad faith involved.

These circumstances indicate that the Respondent registered and uses the disputed domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to its potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such website or location, or of a product or service on such website or location. The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUGUES-ES.COM**: Transferred

PANELLISTS

Name	Dietrich Beier
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DATE OF PANEL DECISION	2021-12-01
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Publish the Decision
