

Decision for dispute CAC-UDRP-104109

Case number	CAC-UDRP-104109
Time of filing	2021-10-29 09:35:16
Domain names	bouygues-constructlon.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

Name	Robert Cellabos
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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 owns the international trademark registration no. 732339 for BOUYGUES CONSTRUCTION registered since April 13, 2000 in class 37.

The Complainant also owns the domain name <bouygues-construction.com>, registered since May 10, 1999 and used in connection with the Complainant's activities in the constructions field.

FACTUAL BACKGROUND

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

BOUYGUES S.A., is an industrial group of companies focused in three main fields: constructions, with Bouygues Construction, real estate with Bouygues Immobilier, and Colas; and media/communication, with French TV channel TF1 and Bouygues Telecom. According to the Complainant's submission, BOUYGUES operates in 81 countries and has a net profit that amounts to 696 million euros.

BOUYGUES CONSTRUCTION is allegedly a main 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.

The disputed domain name <bouygues-constructlon.com> was registered on October 21, 2021 and resolves to a parking page with commercial links.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant supports that the disputed domain name, <BOUYGUES-CONSTRUCTLON.COM>, is a clear misspelling of its BOUYGUES CONTRUCTION trademark. Thus the Complainant considers the registration of the disputed domain name as an example of typosquatting practice intended to create confusing similarity between the trademark and the disputed domain name.

The Complainant also contends that TLD are disregarded when assessing confusing similarity as they are considered as standard registration requirements.

The Complainant claims that the Respondent has no rights nor legitimate interest in registering the disputed domain name. According to the Complainant's assertions, there is no evidence that the Respondent is known as the disputed domain name or is, in some way, authorized to use the BOUYGUES CONSTRUCTION trademark.

Furthermore, the actual use of the disputed domain name is not considered a "bona fide offering of goods or services" or a "legitimate noncommercial or fair use" for the purposes of the Policy.

The Complainant supports that the disputed domain name was registered and is used in bad faith as it contains a clear misspelling of the BOUYGUES CONTRUCTION trademark and it is used to host a PPC webpage.

RESPONDENT:

The Respondent did not file any 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.

1. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Complainant has successfully proved to be the owner of the trademark BOUYGUES CONSTRUCTION and of the domain name <bouygues-construction.com>.

The Panel finds that the Complainant's trademark and domain name are fully recognizable in the disputed domain name as the substitution of the letter "i" with the letter "l" in the element construction has no significant impact in the confusing similarity assessment.

According to a consolidated case law in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in it, the confusing similarity threshold is met.

Moreover, it is significant to note that the distinctive element of the Complainant's trademark, i.e. BOUYGUES, is identically reproduced in the disputed domain name. As a matter of fact the misspelling touches the element "construction" which has a very limited distinctive character.

The Panel agrees with the Complainant's allegations according to which the disputed domain name appears to be a clear case of typosquatting.

Furthermore, the addition of ".com" is generally disregarded in view of its technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in the disputed domain name. Once such a prima facie case is made, the respondent carries the burden of demonstrating its rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, the Panel finds that the Complainant's submitted evidence and allegations are sufficient to establish a prima facie case of Respondent's lack of rights and legitimate interests in the disputed domain name.

According to the information provided by the Complainant and not contested by the Respondent, Mr. Robert Cellabos is not commonly known by the disputed domain name nor he is authorized to use the Complainant's trademark "BOUYGUES CONSTRUCTION".

Additionally, the disputed domain name links to a PPC webpage.

The Panel finds that such use discloses an absence of a bona fide offering of goods or services and of a legitimate noncommercial/ fair use of the disputed domain name. In the view of the Panel, given the distinctiveness of the Complainant's trademark, the sponsored links are probably used by the Respondent to capitalize on the reputation and goodwill of the "BOUYGUES CONSTRUCTION" trademark.

3. The disputed domain name was registered and is used in bad faith

The Panel finds the following circumstances as material in order to establish the Respondent's bad faith in the registration

of the disputed domain name:

(i) the disputed domain name was registered well after the Complainant acquired rights on the trademark BOUYGUES CONSTRUCTION;

(ii) the Complainant's trademark BOUYGUES CONSTRUCTION enjoys a certain degree of reputation in its field. Therefore it is hardly conceivable that the Respondent registered the disputed domain name being not aware of the Complainant's rights on the trademark. This is even more true in this case as the Respondent used the element "CONSTRUCTLON", misspelling of "construction", which is the Complainant's field of business;

(ii) the disputed domain name is a clear and obvious misspelling of the Complainant's trademark (i.e. typosquatting).

Previous panels found that typosquatting discloses an intention on the part of the respondent to confuse users seeking or expecting to find a website related to the complainant.

As regards use in bad faith, the disputed domain name currently resolves to PPC webpages. The links sponsored through the disputed domain name are not explicable by a "dictionary meaning" of the word "BOUYGUES CONSTRUCTLON". As a consequence, the Panel finds that the disputed domain name is used to exploit the reputation and distinctiveness of the Complainant's trademark for the Respondent's commercial gain and such use is considered in bad faith.

All above considered the Panel finds the evidence submitted as sufficient to prove use and registration of the disputed domain name in bad faith for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. BOUYGUES-CONSTRUCTLON.COM: Transferred

PANELLISTS

Name	Andrea Mascetti
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DATE OF PANEL DECISION **2021-12-03**

Publish the Decision
