

Decision for dispute CAC-UDRP-104160

Case number	CAC-UDRP-104160
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Time of filing	2021-11-16 09:55:24
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Domain names	bouygues-construction.construction
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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

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 was founded by Francis Bouygues in 1952, as BOUYGUES S.A. The Complainant is a diversified group of industrial companies. Its businesses are centered on construction, with Bouygues Construction, Bouygues Immobilier, and Colas; and telecoms and media, with French TV channel TF1 and Bouygues Telecom. Its subsidiary is BOUYGUES CONSTRUCTION (<http://www.bouygues-construction.com/>).

The Complainant is among others the owner of several trademarks BOUYGUES CONSTRUCTION®, such as the international trademark BOUYGUES CONSTRUCTION® n° 732339 registered since April 13, 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 since May 10, 1999.

The disputed domain name <bouygues-construction.construction> was registered on November 2, 2021 and resolves to a parking page with commercial links.

FACTUAL BACKGROUND

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

Founded by Francis Bouygues in 1952, BOUYGUES S.A. (the Complainant) is a diversified group of industrial companies structured by a strong corporate culture. Its businesses are centered on three sectors of activity: construction, with Bouygues Construction, Bouygues Immobilier, and Colas; and telecoms and media, with French TV channel TF1 and Bouygues Telecom. Operating in nearly 90 countries, the Complainant's net profit attributable to the Group amounted to 696 million euros. Its subsidiary BOUYGUES CONSTRUCTION is a world player in the fields of building, public works, energy, and services (please see their website at <http://www.bouygues-construction.com/>). 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. As leader in sustainable construction, the Group and its 58,000 employees have a long-term commitment to helping their customers shape a better life.

1. The disputed domain name is identical to the trademark.

The Complainant contends that the disputed domain name <bouygues-construction.construction> is identical to its well-known and distinctive trademark BOUYGUES CONSTRUCTION® and the domain name associated while the trademark BOUYGUES CONSTRUCTION® is included in its entirety. 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. Consequently, given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark. Furthermore, it is well established that gTLDs may typically be disregarded while the addition of a top-level domain is irrelevant when establishing whether or not a mark is identical or confusingly similar, because top-level domains are a required element of every domain name.

The Complainant recalled:

- CAC case No. 101387, BOUYGUES v. Laura Clare <bouygeus-construction.com>;
- WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin;
- Forum Case No. FA 153545, Gardline Surveys Ltd v. Domain Finance Ltd;
- 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>.

2. The Respondent has no rights or legitimate interests in respect of the domain name

The Complainant contended that the Respondent does not have any rights or legitimate interest in the domain name. The 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 not to have any rights or legitimate interest in the disputed domain name. The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Thus, if the WHOIS information was not similar to the disputed domain name it is obvious that the Respondent was not commonly known by a disputed domain name. Here, the WHOIS information of record identifies the Respondent as "Bouchon Marlene" so that the Respondent cannot be commonly known by the disputed domain name.

The Complainant recalled:

- WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd;

- 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>.

3. The disputed domain name has been registered and is being used in bad faith.

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. Furthermore, the disputed domain name resolves to a parking page with commercial links what is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

The Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

The disputed domain name has been registered and is being used in bad faith. 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. Should the Internet users be misled by the Respondent or by the Registrar (or by another third party) for a commercial gain then the Respondent cannot disclaim its responsibility for the website to which the disputed domain name resolve. In that case it is presumed that the Respondent has allowed the disputed domain name to create 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 disputed domain name was obviously registered and is being used in bad faith.

The Complainant recalled:

- WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC).

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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by respondent is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

(2) respondent has no rights or legitimate interests in respect of the domain name; and

(3) the domain name has been registered and is being used in bad faith.

The Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules because of the Respondent's failure to submit a response. Therefore, in the absence of a response, it is appropriate to accept as true all allegations of the Complaint.

A. THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Panel finds in accordance with the Complainant's statement that the disputed domain name <bouygues-construction.construction> is identical to its well-known and distinctive trademark and the domain name associated. The trademark "BOUYGUES CONSTRUCTION" is well-established. The Panel finds that the disputed domain name wholly incorporates a Complainant's registered trademark what is sufficient to establish the identity of the disputed domain name with the trademark for purposes of the UDRP. The Panel further finds that gTLDs may typically be disregarded while the addition of a top-level domain is irrelevant when establishing whether or not a mark is identical to the trademark.

The Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

B. THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Panel finds that the Respondent does not correspond to the name nor the Respondent has any other rights to the disputed domain name. The use of the Complainant trademark has to be authorized by the Complainant. The Respondent did not evidence any such authorization or license accorded by the Complainant. The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Respondent did not prove the opposite. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Panel finds that the WHOIS information was not similar to the disputed domain name it is obvious that the Respondent was not commonly known by a disputed domain name. Here, the WHOIS information of record identifies the Respondent as "Bouchon Marlene" so that the Respondent cannot be commonly known by the disputed domain name. 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.

Furthermore, the Panel finds that the disputed domain name resolves to a parking page with commercial links. This leads to the conclusion of the Panel that it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

C. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant's trademark "BOUYGUES CONSTRUCTION" is distinctive and based on the registered trademark well-known all around the world. The Respondent should have had knowledge of the Complainant's trademark at the time of registration of the disputed domain name because it has registered a disputed domain name that is confusingly similar to them. Moreover, if the Respondent should have carried only a basic Google search in respect of the wordings "BOUYGUES CONSTRUCTION", the same would have led the Respondent to all obvious references to the Complainant. The disputed domain name is not used for any bona fide offerings. This is a clear evidence of registration of the disputed domain name in bad faith. So that the disputed domain name is not used for any bona fide offerings but for a valuable covering of the Respondent's out-of-pocket costs which are directly and obviously related to the disputed domain name.

The Panel is therefore convinced that the overall circumstances of this case suggest that the disputed domain name was registered and is being used in bad faith and the Complainant has satisfied 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. **BOUYGUES-CONSTRUCTION.CONSTRUCTION**: Transferred

PANELLISTS

Name	JUDr. Vojtěch Trapl
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DATE OF PANEL DECISION	2021-12-14
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Publish the Decision
