

Decision for dispute CAC-UDRP-104213

Case number CAC-UDRP-104213

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Domain names bouyguesuk.info

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization BOUYGUES

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization Bouygues UK - Michael Johnson

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 proprietor of a number of marks, including the mark BOUYGUES (registered in the Madrid international system as 390771, first protected in September 1972 and duly renewed since, with validity in a large number of territories, and the domestic (French) mark BOUYGUES (1197244, 4 March 1982). These marks subsist across a number of classes of both goods and services, including 19 (construction materials) and 42 (building and engineering services).

FACTUAL BACKGROUND

The Complainant, a company with its seat in Paris, France, was established in 1952 and now operates in over 80 countries. Its areas of activities include construction, media, and telecommunications. Its name comes from the family name of its founder. It operates a number of websites using domain names that it has registered, including <BOUYGUES-UK.COM> (registered 24 January 2002).

The Respondent, an individual with an address in London, United Kingdom, who has identified their organisation as 'Bouygues UK', registered the disputed domain name on 23 November 2021.

PARTIES CONTENTIONS

No administratively complaint Response has been filed. As neither the written notice of the Complaint nor the advice of delivery was returned to the Czech Arbitration Court, it is not known whether the Respondent received it. One email sent to the Respondent was successfully relayed, and the Respondent never accessed the online platform.

The Complainant submits that all aspects of the Policy have been addressed and that the disputed domain name should be transferred to it. It supports these claims with a number of annexes, setting out its marks and existing activities, including its operations in the United Kingdom.

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).

The disputed domain name differs from the Complainant's mark in two regards. One aspect - the generic TLD .INFO - is disregarded in accordance with established practice under the Policy. The second difference is the addition of the string 'UK', an internationally recognised abbreviation for the United Kingdom (and indeed, the top-level domain assigned to the United Kingdom). Applying the principle that a mark combined with a geographic term or with a term recognisable as a top-level domain is confusingly similar to that mark (see WIPO Jurisprudential Overview, version 3.0, paragraph 1.8), the Panel is satisfied that the disputed domain name is confusingly similar to the Complainant's mark. The Panel also places due weight on the use of a term that is associated with the Complainant (that is, that the Complainant is active in the United Kingdom and indeed operates a website using a similar combination of text).

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 Panel notes first that the Respondent has described itself in its registration as 'BOUYGUES UK', though it is clear from the full information provided by the Registrar that the Respondent has no basis on which to do this, with a different personal name being used, and contact details that do not support this assertion (that is, the Respondent has used a personal email address and - without authority - the actual postal address of the Complainant's UK office). Moreover, the Complainant does not recognise the Respondent's use of this name, and the Respondent has not provided any evidence in support of it (nor is any such evidence apparent from the parking page referenced below). Therefore, the Panel proceeds on the basis that the Respondent is not known as 'BOUYGUES UK' and has not carried out any activities under this name.

At the time of the Complaint, and indeed at the time of this decision, the disputed domain name is only used for a 'parking' page automatically generated by the Registrar, which informs users that the domain is already registered but not yet connected to a website. There is therefore no evidence that might challenge the Panel's prima facie assumption of the absence of rights or legitimate interests; similarly, the lack of a Response in the present dispute allows this assumption to be confirmed.

The Panel also notes the Complainant's statement that the Respondent is not affiliated with nor authorised by it (the Complainant) and that it does not work with or carry out any business with the Respondent, and the accompanying statement that neither license nor authorisation has been granted to make use of the Complainant's mark, including but not limited to registration of the disputed domain name.

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).

The Panel notes the well-known nature of the Complainant's mark, and other decisions under the Policy that a Respondent would normally be aware of it at the point of registration (e.g. CAC Case No. 103800 BOUYGUES v ERIC DENIS <bouyges-travaux.com>). In this regard, the Panel also notes the use of the Complainant's mark and the identifier UK as the purported

description of the Respondent, which has been shown to be false, and the Complainant's long-established website <BOUYGUES-UK.COM> and its record of operations in the United Kingdom (UK) for over two decades (supported by evidence in an annex to the Complaint).

Regarding use, the Panel accepts the Complainant's submission that the present dispute is one within the scope of the 'Telstra' concept of passive holding of a domain name: see WIPO Case No. D2000-0003, Telstra Corporation v Nuclear Marshmallows. Applying the Telstra criteria, the Panel agrees in light of the evidence notes above that the mark is distinctive and enjoys an obvious reputation. It is acknowledged that the Respondent, who also mis-described itself in the registration and used a privacy/proxy service, failed to submit a response or to provide any evidence of actual or contemplated good-faith use. The Panel has also not identified any plausible good-faith use, noting the use so far of a 'parking' page and the configuration of MX servers.

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 the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the mark BOUYGUES, and that the disputed domain name is confusingly similar to this mark, differing in substance only with the addition of the geographical identifier 'UK'. In light of the evidence presented by the Complainant, and applying the concept of passive holding, the Panel finds that the disputed domain name was registered and is being used in bad faith; the Complainant's activities and associated website in respect of the United Kingdom are taken into account. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the disputed domain name should be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGUESUK.INFO**: Transferred

PANELLISTS

Name	Dr Daithi Mac Sithigh
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DATE OF PANEL DECISION 2022-01-16

Publish the Decision
