

Decision for dispute CAC-UDRP-104627

Case number	CAC-UDRP-104627
Time of filing	2022-06-09 09:58:51
Domain names	bouyguesconstruct.com

Case administrator

Organization	Denisa Bilík (CAC) (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	Charles Smith
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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 has rights in the BOUYGUES, trademark and service mark through its ownership of a portfolio of trademark and service mark registrations and extensive use of the mark in its international business including in the construction sector. The Complainant's trademark and service mark registrations include:

- international trademark BOUYGUES, registration number 390771 registered since September 1st, 1972 for goods and services in classes 6, 19, 37 and 42;
- French trademark BOUYGUES, registration number 1197244 registered since March 4th, 1982; and
- international trademark BOUYGUES CONSTRUCTION registration number 732339 registered since April 13th, 2000 for services in class 37.

FACTUAL BACKGROUND

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

The Complainant is a diversified group of companies operating in the fields of construction, telecoms and media and is the owner of a portfolio of trademark registrations including those listed above.

The Complainant has an established Internet presence, and its subsidiary BOUYGUES CONSTRUCTION maintains a website at <www.bouygues-construction.com> presenting its services in the fields of building and construction including public works, and energy.

The disputed domain name <bouyguesconstruct.com> was registered on May 27, 2022 and redirects Internet traffic to the official website of one of the companies within the Complainant's group, BOUYGUES CONSTRUCTION AUSTRALIA at <www.bouygues-construction.com.au/>.

There is no information available about the Respondent except for that provided in the Complaint, the Registrar's WhoIs and the information provided by the Registrar in response to the enquiry made by the Centre requesting verification of the registration details of the disputed domain name in the course of this proceeding.

The Respondent availed of a proxy service to conceal his name on the published WhoIs and the Registrar has confirmed that the Respondent is the registrant of the disputed domain name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims rights in the BOUYGUES and BOUYES CONSTRUCTION trademarks established by its ownership of the trademark and service mark registrations described above and extensive use of the marks by itself and other companies within its group, in their international business, which includes the construction sector.

The Complainant contends that the disputed domain name <bouyguesconstruct.com> is confusingly similar to its BOUYGUES trademark and service mark as it includes the BOUYGUES mark in its entirety.

It is submitted that 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". See, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin. WIPO Case No. D2003-0888.

The Complainant further contends that the additional term "construct", and the generic Top Level Domain extension <.com>, in the disputed domain name are not sufficient to change the overall impression of the designation as being connected to the Complainant's BOUYGUES trademark, nor do these additional elements prevent the likelihood of confusion between the disputed domain name and the Complainant and its BOUYGUES trademark.

On the contrary, the Complainant argues, that the addition of the term "construct" refers to the Complainant's trademark BOUYGUES CONSTRUCTION and the Complainant's subsidiary company BOUYGUES CONSTRUCTION.

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name arguing that the Respondent is not identified as the disputed domain name in the WhoIs database. 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 Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group, Forum Case No. FA 1781783, <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 asserts that the Respondent is neither affiliated with nor authorized by the Complainant in any way; nor does the Complainant carry out any activity for or have any business with the Respondent.

The Complainant adds that neither license nor authorization has been granted to the Respondent to make any use of the

Complainant's BOUYGUES mark or apply for registration of the disputed domain name by the Complainant.

The Complainant then refers to a screen capture of the website to which the disputed domain name resolves which is submitted in an annex to the Complaint, to illustrate that the disputed domain name redirects Internet traffic to the official website of a company that is a member of the Complainant's group, BOUYGUES CONSTRUCTION AUSTRALIA at <www.bouygues-construction.com.au>. The Complainant contends that therefore the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor a legitimate non-commercial or fair use of it. See *Better Existence with HIV v. AAA Forum Case No. FA 1363660*, (“[E]ven though the disputed domain name still resolves to Complainant's own website, Respondent's registration of the disputed domain name in its own name fails to create any rights or legitimate interests in Respondent associated with the disputed domain name under Policy ¶ 4(a)(ii).”).

The Complainant next alleges that the disputed domain name was registered and is being used in bad faith, arguing that because the Complainant, its business and BOUYGES mark are so well known, the registrant must have been aware of the Complainant and its rights in the mark at the time the disputed domain name was chosen and registered.

Furthermore, the Complainant argues that the disputed domain name is being used in bad faith because, as submitted above, it redirects Internet traffic to the official website of one of the Complainant's associated companies, BOUYGUES CONSTRUCTION AUSTRALIA at <www.bouygues-construction.com.au>. Thus, the Complainant contends that the Respondent had knowledge of the Complainant's rights prior to the registration of the disputed domain name, which is a hallmark of bad faith. See *Forum Case No. FA 1382148, Verizon Trademark Servs. LLC v. Boyiko* (“The Panel finds that Respondent's registration and use of the confusingly similar disputed domain name, even where it resolves to Complainant's own site, is still registration and use in bad faith pursuant to Policy ¶ 4(a)(iii).”).

Consequently, it is submitted that the disputed domain name has been registered by the Respondent in an effort to take advantage of the good reputation Complainant had built up in its BOUYGUES trademarks, with the sole aim of creating confusion with the Complainant's trademarks and domain names.

RESPONDENT:

No administratively complaint 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

The Complainant has provided uncontested, convincing evidence of its rights in the BOUYGUES and BOUYES CONSTRUCTION trademarks and service marks established by its ownership of the trademark and service mark registrations listed above and extensive use of the marks by itself and its group of companies in their international business,

and in particular the construction sector.

The disputed domain name <bouyguesconstruct.com> consists of the Complainant's BOUYGUES mark in its entirety in combination with the term "construct" and the gTLD extension <.com>.

The Complainant's BOUYGUES mark is the initial, dominant, and only distinctive element in the disputed domain name.

The term "construct" in the disputed domain name is a reference to construction activities and as such is generic, and, lacking any distinguishing character, it does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's BOUYGUES mark.

Similarly, the presence of the gTLD extension <.com> does not prevent a finding that the disputed domain name is confusingly similar to the Complainant's BOUYGUES mark as it is likely, in context, to be considered by Internet users to be a necessary technical element for a domain name.

This Panel finds therefore that the disputed domain name <bouyguesconstruct.com> is confusingly similar to the BOUYGUES mark in which the Complainant has rights and the Complainant has therefore succeeded in the first element of the test in Policy paragraph 4(a)(i).

The Complainant has made out a prima facie case that the Respondent has no rights or legitimate interest in the disputed domain name arguing that:

the Respondent is not known as the disputed domain name;

panels established under the Policy have held that a respondent was not commonly known by a disputed domain name if as in the present case, the respondent is not identified as such in the Whois database;

the Respondent is neither affiliated with, nor authorized by, the Complainant in any way,;

the Complainant does not carry out any activity for, nor does it have any business with the Respondent;

the Complainant has granted neither license nor authorization to the Respondent to make any use of the Complainant's trademark BOUYGUES, nor to apply for registration of the disputed domain name;

a screen capture of the website to which the disputed domain name resolves which is submitted in an annex to the Complaint, illustrates that the disputed domain name redirects to the official website of a member of the Complainant's group of companies: BOUYGUES CONSTRUCTION AUSTRALIA's at <www.bouygues-construction.com.au/>and therefore it follows that the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, or a legitimate non-commercial or fair use of it.

It is well established that once a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that the Respondent has no rights or legitimate interests in the disputed domain name.

Complainant has therefore succeeded in the second element of the test in Policy paragraph 4(a)(ii).

The evidence on record show that the Complainant's marks are well known and predate the registration of the disputed domain name. It is implausible that the registrant of the disputed domain name was not aware of the Complainant's mark when the disputed domain name was chosen and registered.

The Complainant's BOUYGES mark is distinctive, and it is the only distinctive element within the disputed domain name. It is most improbable that the disputed domain name, which contains the Complainant's mark with the addition of the term "construct", was chosen for any reason other than to create a reference to the Complainant and its trademark.

The element "construct" in context is also a reference to Complainant's BOUYGUES CONSTRUCTION registered trademark and the name of the Complainant's subsidiary.

On the balance of probabilities therefore, this combination of elements in the disputed domain name must have been chosen and registered to target and take predatory advantage of Complainant's mark and goodwill in the BOUYGUES mark.

This Panel finds therefore that the disputed domain name was registered in bad faith in order to take predatory advantage of its confusing similarity with the Complainant's BOUYGUES mark.

Furthermore the evidence shows that the disputed domain name redirects to the official website of one of the Complainant's subsidiary companies, BOUYGUES CONSTRUCTION AUSTRALIA at <www.bouygues-construction.com.au>.

Such intentional use of the disputed domain name is an interference with, and misdirection of Internet traffic and the unauthorised use of the Complainant's mark for this purpose constitutes use of the disputed domain name in bad faith for the purposes of the Policy.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, the Complainant has succeeded in the third element of the test in Policy paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BOUYGUESCONSTRUCT.COM**: Transferred

PANELLISTS

Name	Mr James Jude Bridgeman
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DATE OF PANEL DECISION 2022-07-06

Publish the Decision
