

Decision for dispute CAC-UDRP-104842

Case number	CAC-UDRP-104842
Time of filing	2022-09-13 09:44:31
Domain names	bouyguesbatiment-iles-de-france.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

Organization	Rafael Vivier
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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 owner of the following registered trademarks:

- international trademark (word) BOUYGUES BATIMENT no. 723515, registered since 22 November 1999 in class 37; and
- international trademark (word) BOUYGUES BATIMENT no. 001217223, registered since 25 July 2000 in class 37.

Through its subsidiary, conducting business under the trade name Bouygues Construction, the Complainant also owns the domain name <bouygues-batiment.com>, registered since 29 November 2009.

The Complainant's above-mentioned rights are hereinafter collectively referred to as the BOUYGUES BATIMENT Trademark.

FACTUAL BACKGROUND

Founded by Francis Bouygues in 1952, 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 over 80 countries, the Complainant's net profit attributable to the Group amounts to 1,125 million euros.

The disputed domain name <bouyguesbatiment-iles-de-france.com> was registered on 30 October 2019 and resolves to a website without any substantial content. Moreover, the disputed domain name has been used in relation with a phishing attempt.

The facts asserted by the Complainant are not contested by the Respondent.

PARTIES CONTENTIONS

Complainant:

The Complainant contends that the disputed domain name is confusingly similar to its trademark, since it incorporates in its entirety the Complainant's registered and well-known BOUYGUES BATIMENT Trademark. The mere addition of the terms "ILES DE FRANCE" does not prevent a finding of confusing similarity to the Complainant's trademark.

The Complainant contends that the Respondent has nothing to do with the Complainant, nor has been licensed or authorised to register or use the disputed domain name. The disputed domain name does not correspond to the Respondent's name, nor is this latter commonly known by the disputed domain name or owns any corresponding registered trademarks. The disputed domain name resolves to an inactive website and the Respondent has used it in a phishing scheme to pass himself off as one of the Complainant's employees. Using the domain name in this manner is neither a bona fide offering of goods or services, nor a non-commercial or fair use under the Policy.

Finally, the Complainant contends that, given the distinctiveness and reputation of the BOUYGUES BATIMENT Trademark, it is unlikely that the Respondent had no knowledge of the Complainant's mark when he had registered the disputed domain name confusingly similar to such mark. To the contrary, the Respondent has used the disputed domain to send phishing e-mails. Therefore, it is clear that the disputed domain name has been registered and used with bad faith intention.

The Complainant, therefore, requests the transfer of the disputed domain name.

Respondent:

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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used by the Respondent in bad faith.

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in the BOUYGUES BATIMENT Trademark since 1999.

In assessing identity or confusing similarity, the Panel finds that the disputed domain name is confusingly similar to the BOUYGUES BATIMENT Trademark, because it incorporates the entirety of such mark and differs from it by merely adding the geographic term "ILES-LE-FRANCE" (erroneously with an S at the end of the term "ILE"), and the TLD ".COM".

In UDRP cases where the relevant trademark is recognisable within the disputed domain name, panels agree that the addition of other letters and terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see paragraph 1.7 of WIPO Overview 3.0).

UDRP panels also agree that the TLD is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of the registration (see paragraph 1.11.1 of WIPO Overview 3.0).

Hence, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that a complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to that respondent (see paragraph 2.1 of the WIPO Overview 3.0: "where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element").

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the BOUYGUES BATIMENT Trademark or to register the disputed domain name.

The disputed domain name was registered on 30 October 2019 by Rafael Vivier, an individual residing in the UK. There is no evidence that the Respondent has been commonly known by the disputed domain name or acquired any trademark or service mark rights in a name corresponding to the disputed domain name.

Although the disputed domain name does not resolve to any active website, the Complainant has shown that the Respondent had used the disputed domain name to send e-mails impersonating the Complainant and its employees to obtain sensitive or confidential personal information and/or to solicit payment.

Therefore, the Panel is unconvinced that, before any notice of the dispute, the Respondent used or prepared to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services or is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the BOUYGUES BATIMENT Trademark.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The disputed domain name has been registered and is being used in bad faith for the following reasons.

The Respondent registered the disputed domain name, incorporating in its entirety of the Complainant's prior mark. The addition of the geographic term "ILES-LE-FRANCE" (erroneously with an S at the end of the term "ILE"), and the TLD ".COM" (a technical requirement of the registration) is insufficient to escape the finding of confusing similarity between the disputed domain name and the Complainant's mark.

Given the distinctiveness of the Complainant's prior mark, confirmed by several UDRP decisions (see CAC Case No. 101586, BOUYGUES v. 1&1 Internet Limited <bouygues-batiments-ile-defrance.com>: "The Respondent registered the Disputed domain name with full knowledge of the Complainant's well-known trademark [BOUYGUES BATIMENT]"), the Respondent's choice to add a non-distinctive (geographic) term to the BOUYGUES BATIMENT Trademark could not have been for a mere chance without actual knowledge of the Complainant's rights in such mark and the intention to exploit its reputation by diverting traffic away from the Complainant's website. Even assuming that the Respondent had no knowledge of the Complainant's prior mark at the time of

registration of the disputed domain name (which is quite unlikely), it omitted to verify that the disputed domain name would have infringed the Complainant's earlier rights or, even worse, it verified it and deliberately proceeded with the infringing registration and use.

The Complainant has submitted the results of a Google search carried out regarding the terms "BOUYGUES BATIMENT ILES DE FRANCE", all of them related to the Complainant. Should the Respondent have performed a similar search on the Internet before registering the disputed domain name, he would have easily learnt about the Complainant's activities and trademark registered and used extensively.

This Panel points out that, according to paragraph 2 of the Policy, it is the Respondent's responsibility to determine whether the domain name registration infringes or violates third party's rights. By registering the disputed domain name confusingly similar with the Complainant's well-known mark, the Respondent has violated, inter alia, the cited provision of the Policy.

Furthermore, the Complainant has shown that the Respondent used the disputed domain name for sending fraudulent e-mails.

Therefore, the Panel finds that the Respondent, by registering and using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to his web site or other on-line location, by creating a likelihood of confusion with the BOUYGUES BATIMENT Trademark as to the source, sponsorship, affiliation, or endorsement of his web site or location or of a product or service on his web site or location (paragraph 4(b)(iv) of the Policy).

The Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

The disputed domain name is to 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. **bouyguesbatiment-iles-de-france.com**: Transferred

PANELLISTS

Name	Ivett Paulovics
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DATE OF PANEL DECISION	2022-10-13
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Publish the Decision
