

Decision for dispute CAC-UDRP-105173

Case number	CAC-UDRP-105173
Time of filing	2023-02-06 09:03:30
Domain names	bouygues-batiments-iles-des-france.com

Case administrator

Name	Olga Dvořáková (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	Eolia Wirtz
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <bouygues-batiments-iles-des-france.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- International trade mark registration no. 723515, registered on 22 November 1999, for the word mark BOUYGUES BATIMENT, in class 37 of the Nice Classification; and
- EU trade mark registration no. 001217223, registered on 25 July 2000, for the work mark BOUYGUES BATIMENT, in class 37 of the Nice Classification.

(Hereinafter, individually or collectively 'the Complainant's trade mark'; 'the Complainant's trade mark BOUYGUES BATIMENT'; or 'the trade mark BOUYGUES BATIMENT' interchangeably).

The Complainant states that it also owns, through a subsidiary company Bouygues Construction S.A., a number of domain names bearing the BOUYGUES BATIMENT trade mark, including the domain name <bouygues-batiment-ile-de-france.com>, registered in 2008. Bouygues Construction S.A. further uses the geographical term 'Île-de-France' on its official website.

At the time of writing this decision, the disputed domain name <bouygues-batiments-iles-des-france.com> resolves to a parked page which features the following sentence 'This domain is already taken' ('the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

The Complainant, founded in 1953 by Francis Bouygues, is a diversified group of companies which focuses on four main segments of business, namely construction; energy and services; media; and telecoms.

The Complainant operates in over 80 countries and has reported a net profit in excess of EUR 1 billion.

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's submissions can be summarised as follows:

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant avers that the disputed domain name is confusingly similar to the Complainant's trade mark BOUYGUES BATIMENT, to the extent that the disputed domain name incorporates the Complainant's trade mark in its entirety. The addition of both the letter 's' in 'batiment' and the term 'iles des France' in the string is insufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trade mark BOUYGUES BATIMENT. On the contrary, these additions worsen the likelihood of confusion as they refer to the Complainant's subsidiary company Bouygues Bâtiment Ile-de-France. Furthermore, the generic Top-Level Domain ('gTLD') suffix (<.com>) is typically disregarded in the assessment of identity or confusingly similar under paragraph 4(a) of the UDRP Policy.

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

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant's trade mark, or to apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant also asserts that the Respondent is not known by the disputed domain name.

Lastly, the Complainant states that the disputed domain name resolves to a parked page; that such use of the disputed domain name is neither bona fide nor legitimate non-commercial or fair use; and that the Respondent has no demonstrable plan to use the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The trade mark BOUYGUES BATIMENT is well-known and distinctive, and its notoriety has been acknowledged in previous UDRP decisions, eg CAC Case No. 10586, BOUYGUES v 1&1 Internet Limited.

Given the distinctiveness and reputation of the trade mark BOUYGUES BATIMENT, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark BOUYGUES BATIMENT.

Use

The disputed domain name resolves to a parking page and MX servers have been set up, a factor which indicates that the disputed domain name may be actively used for email purposes. Consequently, it is not possible to conceive any plausible actual or contemplated use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent's Submissions

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the

Complainant's submissions are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- (i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (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 in bad faith.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'BOUYGUES BATIMENT' since 1999.

The disputed domain name <bouygues-batiments-iles-des-france.com> was registered on 29 January 2023, and it is composed of the joint terms 'bouygues', 'batiments' and 'iles des france'.

The Complainant's trade mark BOUYGUES BATIMENT is wholly incorporated into the disputed domain name. The additional letters 's' in the French words 'bâtiment' and 'Île-de-France' are rather immaterial to the test under this UDRP Policy ground.

The Panel notes that the contiguous geographical term 'Île-de-France' refers to the French region ('région administrative') which encompasses Paris and vicinities. Hence, the presence of such term in the disputed domain name string enhances the association with the Complainant, insofar as it evokes the Complainant's both geographical provenance and seat of effective management. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

Furthermore, the available record does not establish, prior to the commencement of this UDRP administrative proceeding, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to it in connection with a bona fide offering of goods.

The Respondent has failed to refute the Complainant's prima facie case that it has met the burden of proof under the second UDRP Policy ground.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant's trade mark BOUYGUES BATIMENT has been registered since 1999;
- The Complainant has its seat of effective management in Paris, France, which is the country where the Respondent appears to be domiciled;
- The Complainant's subsidiary company Bouygues Construction S.A. owns the domain name <bouygues-batiment-ile-de-france.com>, which was registered in 2008 and is nearly identical to the disputed domain name. This indicia reinforces the presumption that the Respondent registered the disputed domain name with full knowledge of the Complainant;
- The disputed domain name <bouygues-batiments-iles-des-france.com > was registered in 2023;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name;
- UDRP panels have consistently held that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0")), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business; and
- The Respondent's default in this UDRP administrative proceeding.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in a conduct which would fall within the remit of paragraph 4(b)(iv) of the UDRP Policy:

'(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.'

As mentioned in the above section 'Identification of Rights', the disputed domain name resolves to a parked page.

In order to determine this Policy ground, the Panel takes stock of paragraph 3.1.4 (divert Internet users for commercial gain) and paragraph 3.3 (passive holding) of the WIPO Jurisprudential Overview 3.0, according to which panels have found various types of evidence to support a presumption of bad faith under the above circumstances. The most compelling factors in the present matter are: (i) the actual confusion between the Complainant's trade mark BOUYGUES BATIMENT and the disputed domain name; (ii) the Respondent's attempt to cause such confusion; (iii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; and (vi) the absence of any conceivable good faith use of the disputed domain name.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

Accepted

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

1. **bouygues-batiments-iles-des-france.com**: Transferred
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PANELLISTS

Name	Gustavo Moser
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DATE OF PANEL DECISION **2023-03-05**

Publish the Decision
