

Decision for dispute CAC-UDRP-105578

Case number	CAC-UDRP-105578
Time of filing	2023-06-29 11:00:25
Domain names	bouygues-batimentinternational.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

Organization	BERNARD ALLOSTERY
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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 established by evidence which the Panel accepts that it is the owner the following registered trademarks for BOUYGUES BATIMENT:

- International trademark registration n. 723515 for BOUYGUES BATIMENT, registered on November 22, 1999 , and current until November 22, 2029, in connection with classes 511 NCL(7) and 37; and
- EUIPO (European Union) trademark registration n. 001217223 for BOUYGUES BATIMENT, registered on July 25, 2000 and current to June 23, 2029 in connection with class 37,

(hereinafter referred to as "the BOUYGUES BATIMENT trademark").

FACTUAL BACKGROUND

The Complainant is a diversified international group on industrial companies engaged principally in construction, energy and services, media and telecoms. It owns a series of registered trademarks that constitute the BOUYGUES BATIMENT trademark and a series of domain names incorporating the same distinctive BOUYGUES BATIMENT wording that it uses in its business. It has come to the notice

of the Complainant that the Respondent has registered the domain name <bouygues-batimentinternational.com> ("the disputed domain name") the principal part of which is clearly a copy of the Complainant's trademark, to which the Respondent has added the word "international" and then caused the domain name to resolve to a webpage with no content. This is clearly confusing to internet users, Complainant's customers and potential customers and disruptive of the Complainant business.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT

The Complainant made the following contentions.

1. The Complainant is a diversified international group on industrial companies engaged in construction, energy and services, media and telecoms.
2. Complainant owns several registered trademarks for the BOUYGUES BATIMENT trademark and several domain names that incorporate the BOUYGUES BATIMENT trademark and which it uses in its business.
3. The Respondent registered the domain name <bouygues-batimentinternational.com> ("the disputed domain name") on June 20, 2023.
4. The disputed domain name is confusingly similar to the Complainant's BOUYGUES BATIMENT trademark, as the only difference between the domain name and the trademark is the addition of the word "international" to the trademark. The addition of that word is not sufficient to escape the finding that the domain name is confusingly similar to the BOUYGUES BATIMENT trademark. The addition also worsens the likelihood of confusion, as the domain name gives the impression that it is connected with the trademark.
5. The Respondent has no right or legitimate interest in the disputed domain name. That is because the Complainant has not authorized the Respondent to make any use of nor granted any licence to it to use the BOUYGUES BATIMENT trademark or to register a domain name incorporating the BOUYGUES BATIMENT trademark.
6. Moreover, it is apparent that the Respondent is not commonly known by the disputed domain name.
7. Further, the Respondent has not made any fair or non-commercial use of the disputed domain name.
8. The Respondent has no business or other association with the Complainant.
9. The domain name resolves to a parking page with no content, showing that the Respondent has not made any legitimate use of the domain name and has no demonstrable plan to use it legitimately.
10. The Respondent has registered and used the disputed domain name in bad faith.
11. The BOUYGUES BATIMENT trademark is famous, distinctive and well-known around the world. Therefore, the Respondent must have had full knowledge of the trademark at the time of its registration of the disputed domain name.
12. It is not possible to conceive of any legitimate activity in which the Respondent could use the domain name.
13. The domain name has been set up with MX records which suggests that it may be used for email purposes.
14. The validity of these contentions is supported by numerous prior UDRP decisions including those in which the Complainant has been a complainant.

RESPONDENT

The Respondent did not file a Response in this proceeding.

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

DISCUSSION AND FINDINGS

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy ("the Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy ("the Rules"), and the CAC Supplemental Rules.

A. Administrative compliance

By notification dated June 29, 2023 and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complaint had not sufficiently identified the Respondent. The notification invited the Complainant to have regard to the Registrar's verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder. The Complainant was also invited to use the correct name of the UDRP provider FORUM. Also on June 29, 2023, the Complainant filed an Amended Complaint with the deficiencies having been rectified and the CAC determined that the Complaint should be admitted to proceed further in the Administrative Proceeding.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B. Substantive matters

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. In that regard, the Panel also notes that the onus is on the complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

Identical or Confusingly Similar.

The Complainant has adduced evidence that the Panel accepts that it is the registered owner of the BOUYGUES BATIMENT trademark and as such has rights in that trademark.

The Panel next finds that the Respondent registered the disputed domain name on June 20, 2023.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's BOUYGUES BATIMENT trademark for the following reasons.

First, the domain name includes the entirety of the BOUYGUES BATIMENT trademark and the only additions made to the trademark are a hyphen and the word "international". Accordingly, the domain name would inculcate in the mind of any internet user who saw it that it was in fact the well-known BOUYGUES BATIMENT trademark and hence an official domain name of the Complainant that would lead to an equally official website of the Complainant. The Panel also agrees entirely with the submission of the Complainant that the addition of the word "international" is not sufficient to escape the finding that the domain name is confusingly similar to the BOUYGUES BATIMENT trademark. In fact, the addition worsens the likelihood of confusion, as the domain name gives the impression that it is connected with the trademark and its owner, which it is not.

Secondly, taken as a whole, the domain name would convey to the objective bystander that it related to the activities of the Complainant, giving rise to inevitable confusion.

Thirdly, it is also now well-established that the addition of a generic top level domain, such as “.com” in the present case, cannot negate the confusing similarity that is otherwise present, as it is in this case.

These findings are supported by prior UDRP decisions cited by the Complainant.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s BOUYGUES BATIMENT trademark.

The Complainant has thus shown the first of the three elements that it must establish.

Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests and that when such a *prima facie* case is made out, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent cannot do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. That *prima facie* case is made out from the following considerations.

The evidence of the Complainant is that the Respondent is not related in any way to the Complainant’s business, is not affiliated with the Complainant nor authorized by it in any way to use the BOUYGUES BATIMENT trademark and does not carry out any activity for, nor has any business with, the Complainant.

It is also clear from the evidence that the Respondent is not commonly known by the domain name within the meaning of Paragraph 4(c) (ii) of the Policy.

Moreover, the essence of this proceeding is that the Respondent has set about attempting to trick internet users into thinking that the domain name is an official domain name of the Complainant and that it will lead to an official website of the Complainant, neither of which is true. Clearly, such conduct cannot give rise to a right or legitimate interest in the domain name.

The domain name resolves to a parking page that is empty for all practical purposes and which shows that the Respondent has not made any legitimate use of the domain name and has no demonstrable plan to use it legitimately.

These facts give rise to the *prima facie* case made out by the Complainant.

These propositions are supported by prior UDRP decision which have been cited by the Complainant.

The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default. Accordingly, the *prima facie* case has not been rebutted and the Complainant has therefore made out the second of the three elements that it must establish.

Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith: *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent’s documented out-of-pocket costs directly related

to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b) (iv) of the Policy and probably within other provisions of paragraph 4 (b) of the Policy as well.

That is so for the following reasons.

The Complainant first submits that it is reasonable to infer that Respondent was aware of Complainant and its well-known trademark at the time of registration of the disputed domain name. The Panel agrees. Because of the fame and strong reputation of the BOUYGUES BATIMENT trademark, the Respondent must have been aware of the existence of the Complainant and its reputation when it registered the disputed domain name. The Panel finds that it is highly likely that the Respondent chose the trademark to invoke the name and concept of the Complainant, its fame and its activities. By that means the Respondent, in registering the domain name deceptively and without any authority to do so, must be taken to have created a likelihood of confusion, with the intention of attracting current and potential customers of the Complainant and internet users in general who are looking for its services and doing so in the misleading manner that the Respondent adopted. Accordingly, the domain name was registered in bad faith.

Secondly, the evidence brings the case squarely within paragraph 4(b)(iv) of the UDRP, i.e. "by using the domain name, (the Respondent) ... intentionally attempted to attract, for commercial gain, Internet users to (its) web site 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 (its) web site or location or of a product or service on (its) web site or location". The only conclusion open on the evidence is that the Respondent formed the intention to mislead internet users as to whether the landing page to which the domain name resolves is a genuine site of the Complainant. That is clearly bad faith registration and also bad faith in the use of the domain name by the Respondent.

Thirdly, the conduct of the Respondent also amounts to :

(a) a probable intention to try to sell the domain name to the Complainant by blackmailing it into buying it, within the meaning of paragraph 4(b)(i) of the Policy;

(b) intending to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name within the meaning of paragraph 4(b) (ii); and

(c) intending to disrupt the business of the Complainant within the meaning of paragraph 4(b)(iii).

The Panel also agrees with the additional points made by the Complainant that it is not possible to conceive of any legitimate activity in which the Respondent could use the domain name and that as the domain name has been set up with MX records, this suggests that it may be used for email purposes.

Finally, in addition and having regard to the totality of the evidence, the Panel finds that, in view of the Respondent's registration of the disputed domain name using the BOUYGUES BATIMENT trademark and in view of the conduct of the Respondent since it acquired the domain name, the Respondent registered and used it in bad faith within the generally accepted meaning of that expression.

The foregoing propositions are supported by prior UDRP decision which have been cited by the Complainant.

Accordingly, the Complainant has shown the third of the three elements, has established all three elements that it must establish and is thus entitled to the relief that it seeks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bouygues-batimentinternational.com**: Transferred

PANELLISTS

Name	Neil Brown
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DATE OF PANEL DECISION 2023-07-27

Publish the Decision
