

Decision for dispute CAC-UDRP-105854

Case number	CAC-UDRP-105854
Time of filing	2023-10-09 09:34:45
Domain names	bouygues-construrction.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (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	Yang Bo
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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 the owner of several trademarks BOUYGUES® and BOUYGUES CONSTRUCTION®, such as:

- International trademark BOUYGUES® n° 390771 registered since 1 September 1972;
- French trademark BOUYGUES® n° 1197244 registered since 4 March 1982; and
- International trademark BOUYGUES CONSTRUCTION® n° 732339 registered since 13 April 2000.

The Complainant also owns, through its subsidiary, a number of domain names including the same distinctive wording BOUYGUES® such as <bouygues-construction.com>, registered since 10 May 1999.

The disputed domain name <bouygues-construrction.com> was registered on 13 September 2023 and is inactive.

FACTUAL BACKGROUND

The Complainant BOUYGUES S.A. was founded by Francis Bouygues in 1952 and is being 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 amounted to 696 million euros.

PARTIES CONTENTIONS

COMPLAINANT:

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant contends that the disputed domain name <bouygues-construrction.com> is confusingly similar to its trademarks.

The obvious misspelling of the Complainant's trademarks BOUYGUES CONSTRUCTION® is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. Previous panels have found that the slight spelling variations does not prevent a domain name from being confusingly similar to the Complainant's trademark. The Complainant recalls WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted <arcelormltal.com>.

Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

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

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. 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.

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOUYGUES®, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the disputed domain name is inactive. The Complainant contends that Respondent did not make any use of disputed domain name, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It proves a lack of legitimate interests in respect of the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark.

C. The disputed domain name was registered and is being used in bad faith

The Complainant states that the disputed domain name <bouygues-construrction.com> is confusingly similar to its well-known and distinctive trademarks and the domain name associated. Past panels have confirmed the notoriety of the trademarks BOUYGUES®.

Thus, the Respondent should have known about the Complainant at the time of the registration of the disputed domain name.

The obvious misspelling of the Complainant's trademarks BOUYGUES CONSTRUCTION® is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

Furthermore, the disputed domain name is inactive. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the 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 trademark law.

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

In order to succeed in its claim, the Complainant has to prove that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) The disputed 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 with respect to the disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

The Panel reviewed carefully the Complaint and the evidence provided by the Complainant. The Respondent filed neither administratively compliant Response nor provided the Panel with any evidence. Thus, the Panel based its finding and the Decision on the evidence presented by the Complainant and available websites and public information concerning the disputed domain name, namely the WHOIS databases.

The Panel came to the conclusions as follows:

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO A TRADEMARK IN WHICH THE COMPLAINANT HAS RIGHTS

It is well established that the Complainant is among others the proprietor of the trademarks BOUYGUES® and BOUYGUES CONSTRUCTION®, such as International trademark BOUYGUES® n° 390771 registered since 1 September 1972 and French trademark BOUYGUES® n° 1197244 registered since 4 March 1982 and International trademark BOUYGUES CONSTRUCTION® n° 732339 registered since 13 April 2000.

The Complainant also owns, through its subsidiary, a number of domain names including the same distinctive wording BOUYGUES® such as <bouygues-construction.com>, registered since 10 May 1999. The Panel finds that Complainant's domain name was registered on 10 May 1999 and is still in active use.

The disputed domain name <bouygues-construrction.com> was registered on 13 September 2023. The disputed domain name is inactive.

The Panel concludes that the misspelling of the Complainant's trademarks BOUYGUES CONSTRUCTION® is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. Even the slight spelling variations does not prevent a domain name from being confusingly similar to the Complainant's trademark. The disputed domain name differs from the Complainant's trademark by one letter "r" added between the letters "u" and "c" which right place in the word "construction" remains. This is by the Panel considered for typical example of typosquatting by intentionally taking advantage of Internet users that inadvertently type an incorrect address and misspell the complainant's trademark when seeking to access the trademark owner's website. That Panel's conclusion is based on section 1.9 of the WIPO Overview 3.0.

Furthermore, is it well established by the UDRP jurisprudence that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated. Where a domain name incorporates the entirety of a trademark the disputed domain name is considered confusingly similar to that mark. On the other hand, the top-level domain ".com" is merely instrumental to the use of the Internet so the disputed domain names remain confusingly similar despite the inclusion of ".com". The presence of the generic Top-Level Domain ("gTLD") extension ".com" in the first level portion of each of the disputed domain names is a standard registration requirement and may be disregarded when assessing whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

The Panel therefore considers the disputed domain names to be confusingly similar to the trademark FRETTE in which the Complainant has rights and its conduct falls within the meaning of paragraph 4(a)(i) of the Policy.

RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN RESPECT OF THE DISPUTED DOMAIN NAME

It is well established that the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name.

The Panel does not find that the Respondent is commonly known by the disputed domain names or that it has legitimate interests over the disputed domain names nor the Respondent contends it. Respondent's name is "Yang Bo".

The Panel does not find that the Complainant has ever granted the Respondent with any rights to use the Complainant's trademarks in any forms, including the disputed domain names nor authorized by the Complainant in any way. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark BOUYGUES®, or apply for registration of the disputed domain name by the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent or have ever had any previous relationships, the Complainant is not affiliated with Respondent.

The Panel finds that the disputed domain name is inactive. The Panel concurs with the allegation of the Complainant that the Respondent has no demonstrable plan to use the disputed domain name. It proves a lack of legitimate interests in respect of the disputed domain name except in order to create a likelihood of confusion with the Complainant and its trademark.

Moreover, the Panel concludes that the Respondent should have already performed a careful search before registering the disputed domain name and should have quickly learnt that the trademark BOUYGUES® is owned by the Complainant and that the Complainant has been using its trademark in many other countries worldwide. Nevertheless, the Panel finds that the evidence shows that the Respondent obviously knew about the Complainant and its trademark BOUYGUES® when it registered the disputed domain name and chose to register it as such.

The Panel therefore finds that the Respondent does not have rights or legitimate interests in the disputed domain name and its conduct falls within the meaning of paragraph 4(a)(ii) of the Policy.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS BEING USED IN BAD FAITH

1. Registration of the disputed domain name in bad faith

The Panel finds that the registration of the Complainant's trademark BOUYGUES® in 1999 pre-dates the registration of the disputed domain name in 2023 while the Respondent has never been authorized by the Complainant to use the BOUYGUES® trademark nor to register the disputed domain name. The Respondent could not ignore the existence of the BOUYGUES® trademark at the time of the registration of the disputed domain name. The Panel finds that as far as registration in bad faith is concerned, the Respondent registered disputed domain name which contain a well-known third party's trademark BOUYGUES® without authorization. The disputed domain name <bouygues-construrction.com> is confusingly similar to its well-known and distinctive trademarks and the domain name associated.

The misappropriation of a well-known trademark as disputed domain name by itself constitutes bad faith registration.

2. The disputed domain name is being used in bad faith

The Panel finds that even if the Respondent has not demonstrated any activity in respect of the disputed domain name or contemplated active use of the domain name the incorporation of a famous mark BOUYGUES® into a domain name, coupled with an inactive website, is evidence of bad faith registration and use.

In view of the above, the Complainant registered and used the disputed domain name in bad faith and its conduct falls within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	Vojtěch Trapl
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DATE OF PANEL DECISION 2023-11-06
