

Decision for dispute CAC-UDRP-105910

| | |
|----------------|----------------------------------|
| Case number | CAC-UDRP-105910 |
| Time of filing | 2023-10-26 09:46:59 |
| Domain names | bougyues-construction.com |

Case administrator

| | |
|------|------------------------------------|
| Name | Olga Dvořáková (Case admin) |
|------|------------------------------------|

Complainant

| | |
|--------------|-----------------|
| Organization | BOUYGUES |
|--------------|-----------------|

Complainant representative

| | |
|--------------|--------------------------|
| Organization | NAMESHIELD S.A.S. |
|--------------|--------------------------|

Respondent

| | |
|--------------|----------------------|
| Organization | Cloud DNS Ltd |
|--------------|----------------------|

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 <bougyues-construction.com>.

IDENTIFICATION OF RIGHTS

BOUYGUES S.A. (the Complainant) states and provides evidence to support, that it is the owner of a portfolio of trademarks BOUYGUES and BOUYGUES CONSTRUCTION, such as:

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

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

FACTUAL BACKGROUND

The Complainant is a diversified group of industrial companies active in the following sectors: construction, with Bouygues Construction, Bouygues Immobilier, and Colas; and telecoms and media, with French TV channel TF1 and Bouygues Telecom. Operating in nearly 80 countries, the Complainant's net profit attributable to the Group amounted to 973 million euros.

The disputed domain name <bougyues-construction.com> was registered on October 18, 2023 and resolves to an inactive page and MX servers are configured.

PARTIES CONTENTIONS

COMPLAINANT:

I. The disputed domain name is confusingly similar to the protected mark

According to the Complainant, the disputed domain name <bougyues-construction.com> is confusingly similar to its trademarks. The obvious misspelling of the Complainant's trademarks BOUYGUES and BOUYGUES CONSTRUCTION (i.e. the reversal of the letters "Y" and "G") is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

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.

II. The Respondent does not have any rights or legitimate interest in 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 trademarks, or apply for registration of the disputed domain name by the Complainant.

The Complainant also claims that the disputed domain name is a typosquatted version of the trademark BOUYGUES CONSTRUCTION. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can evidence that a respondent lacks rights and legitimate interests in the domain name.

Finally, the Complainant provides that the disputed domain name resolves to an inactive page. 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.

III. The disputed domain name has been registered and is being used in bad faith

According to the Complainant, the Respondent has registered and is using the disputed domain name in bad faith. The Complainant states that the disputed domain name is confusingly similar to its well-known and distinctive trademarks and the domain name associated.

The Complainant further states that given the distinctiveness of the Complainant's trademarks and its reputation, the Respondent should have known about the Complainant at the time of the registration of the disputed domain name. The Complainant and its subsidiary BOUYGUES CONSTRUCTION are well-known, as BOUYGUES CONSTRUCTION is a world player in the fields of building, public works, energy, and services.

Furthermore, the misspelling in the domain name can state that this practical was intentionally designed to be confusingly similar with the Complainant's trademarks. Previous UDRP Panels have seen such actions as evidence of bad faith.

Moreover, the disputed domain name resolves to an inactive page. 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.

Finally, the disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.

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

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the "Policy") provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith.

1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Complainant has provided evidence and proved to be the owner of trademarks BOUYGUES and BOUYGUES CONSTRUCTION.

The Panel finds that the disputed domain name <bougyues-construction.com> fully incorporates the Complainant's BOUYGUES CONSTRUCTION trademark. The obvious misspelling of the Complainant's trademarks BOUYGUES and BOUYGUES CONSTRUCTION (i.e. the reversal of the letters "Y" and "G") is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name to presumably lead consumers to believe that the disputed domain name is connected to the Complainant.

Moreover, the addition of a purely generic top-level domain ("gTLD") ".com" does not, according to the Panel, add any distinctiveness or prevent the disputed domain name from being confusingly similar to the Complainant's trademark. Previous UDRP panels have also held that the gTLD is not to be considered when assessing whether a domain name is identical or confusingly similar to a trademark. See, e.g., Wiluna Holdings, LLC v. Edna Sherman, FA 1652781 (Forum January 22, 2016) or Red Hat Inc. v. Haecke, FA 726010 (Forum July 24, 2006) (concluding that the <redhat.org> domain name is identical to the complainant's red hat mark because the mere addition of the gTLD was insufficient to differentiate the disputed domain name from the mark).

The Panel finds that the disputed domain name shows a clear visual, phonetic and conceptual resemblance to the Complainant's BOUYGUES and BOUYGUES CONSTRUCTION trademarks, and could confuse Internet users into thinking that the disputed domain name is associated with the Complainant or its trademarks.

In these circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks.

2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests. Once

such prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the BOUYGUES and BOUYGUES CONSTRUCTION marks as part of its domain name. The disputed domain name resolves to a parking page. The Respondent is not in any way affiliated with the Complainant, nor is it authorized to register the disputed domain name. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use.

In a present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

3) The disputed domain name has been registered and is being used in bad faith

The Panel agrees with the Complainant that its trademarks BOUYGUES and BOUYGUES CONSTRUCTION are distinctive and well-known globally. The registration of the Complainant's well-known trademarks predate the registration of the disputed domain name. The Panel finds that there appears no reason why the Respondent would register the Complainant's trademark as part of the disputed domain name, other than to create the impression that it is connected to the Complainant's business. Given the distinctiveness and reputation of the Complainant's trademarks worldwide, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademarks.

The fact that the Respondent has registered the disputed domain name that is confusingly similar to them indicates and in the absence of any evidence contrary (or any administratively compliant response at all) being put forward by the Respondent, that the Respondent, according to this Panel, had knowledge of the Complainant's trademark and that it had such knowledge before the registration and use of the disputed domain name.

Finally, the disputed domain name resolves to a parking page. The Panel thus takes the view that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or location by creating a likelihood of confusion with the Complainant's marks. This further suggests that the Respondent's sole intention in registering the disputed domain name was to take unfair advantage of the Complainant's BOUYGUES and BOUYGUES CONSTRUCTION trademarks and reputation, and suggests registration and use in bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied the third element of the Policy, that the Respondent's registration and use of the disputed domain name is in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bougyues-construction.com**: Transferred

PANELLISTS

| | |
|------|--------------------------|
| Name | Barbora Donathová |
|------|--------------------------|

DATE OF PANEL DECISION 2023-11-29

Publish the Decision
