Decision for dispute CAC-UDRP-106044

Case number	CAC-UDRP-106044
Time of filing	2023-12-07 08:07:23
Domain names	bouygus-construction.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	BOUYGUES

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Glen WARREN

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 registrant of the following trademarks:
- French trademark registration No. 1197244, "BOUYGUES", registered on July 30, 1982, for goods and services in classes 6, 16, 19, 28, 35, 37, 40, 41, 42, 42, 44 and 45;
- International trademark registration No. 390771, "BOUYGUES", registered on September 1, 1972, for goods and services in classes 6, 19, 37, 42;

- International trademark registration No. 732339, "BOUYGUES CONSTRUCTION", registered on April 13, 2000, for goods and services in class 37.

The disputed domain name was registered by the Respondent on November 29, 2023.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant was founded by Francis Bouygues in 1952. It is a diversified industrial group, organized around the sectors of construction (Bouygues Construction, Bouygues Immobilier, and Colas); telecoms (Bouygues Telecom) and media (TF1).

The Complainant underlines that it is the owner of several trademarks containing the word "BOUYGUES" and of the international trademark "BOUYGUES CONSTRUCTION".

The Complainant adds that it is also the owner a number of domain names that contain the distinctive word "BOUYGUES", including the domain name <bouygues-construction.com>.

The Complainant states that the disputed domain name is confusingly similar to its trademark "BOUYGUES CONSTRUCTION".

The Complainant considers that the deletion of the letter "E" in the disputed domain name is not sufficient to avoid confusion with the Complainant's trademark "BOUYGUES CONSTRUCTION".

The Complainant submits that the deletion of the letter "E" is an obvious misspelling of its trademark "BOUYGUES CONSTRUCTION".

The Complainant claims that even with the addition of the top-level domain ".COM" the disputed domain name gives an overall impression of connection with the Complainant's trademarks.

For the above-mentioned reasons, the Complainant considers that the disputed domain name is confusingly similar to the Complainant's trademarks.

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

The Complainant contends that the Respondent is not affiliated with nor authorized by the Complainant in any way.

The Complainant states that the Respondent has no right nor legitimate interest in the disputed domain name. The Complainant declares that it does not carry out any activity for, nor has any business with the Respondent.

The Complainant submits that neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark "BOUYGUES", or to apply for registration of the disputed domain name.

The Complainant notes that the disputed domain name is a typosquatted version of the trademark "BOUYGUES CONSTRUCTION".

The Complainant adds that the disputed domain name resolves to a parking page with commercial links.

On the basis of the above-mentioned elements the Complainant contends that the Respondent has no right or legitimate interests in respect of the disputed domain name.

The Complainant argues that given that, as noted by other panels, the Complainant's trademark is well known, the Respondent should have known about the Complainant at the time of the registration of the disputed domain name.

The Complainant points out that the misspelling in the disputed domain name is evidence of the intention to create a domain name confusingly similar with the Complainant’s trademarks.

The Complainant points out that the disputed domain name resolves to a parking page with commercial links and considers that this is an attempt to attract Internet users for commercial gain by using the Complainant’s trademarks.

The Complainant adds that the disputed domain name has been set up with MX records, and this fact suggests that the disputed domain name may be actively used for e-mail purposes. The Complainant considers that any e-mail emanating from the disputed domain name could not be used for any good faith purpose.

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

In light of the above, the Complainant requests the transfer in its favor of the disputed domain name.

PARTIES CONTENTIONS

The Complainant´s contentions are summarised above.

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 accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

(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 in respect of the disputed domain name; and

(iii) The disputed domain name has been registered and is being used in bad faith.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark or service mark.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark “BOUYGUES CONSTRUCTION”, identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant’s trademark.

The disputed domain name differs from the Complainant’s trademark “BOUYGUES CONSTRUCTION” only by the deletion of the letter "E", and of the top-level domain ".COM".

It is well established that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name (for example WIPO Case No D2016-2545).

In the present case, the Panel considers that the disputed domain name is confusingly similar to the Complainant's “BOUYGUES CONSTRUCTION” trademark for the following reasons: (a) the word “BOUYGUES” is the distinctive and dominant part of the "BOUYGUES CONSTRUCTION" trademark; (b) the only difference between the “BOUYGUES CONSTRUCTION” trademark and the disputed domain name is that in the latter's first word, the letter "E" is missing; (c) the deletion of the letter "E" in the disputed domain name does not create any new word, or give the disputed domain name any distinctive meaning; (d) the disputed domain name is a deliberate misspelling of the Complainant's “BOUYGUES CONSTRUCTION” trademark; and (e) visually the disputed domain name is so close to the Complainant's “BOUYGUES CONSTRUCTION” trademark that confusion is inevitable between them.

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark “BOUYGUES CONSTRUCTION”.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in the disputed domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations 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

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [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 trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”.

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- the Respondent is not identified in the Whois database as the disputed domain name;

- the Respondent is not affiliated with nor authorized by the Complainant in any way;

- it 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 to apply for registration of the disputed domain name;

- the disputed domain name is a typosquatted version of the trademark "BOUYGUES CONSTRUCTION";

- the disputed domain name resolves to a parking page with commercial links.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain name redirects users to a parking page.

Taking into account that the Respondent is not known as the disputed domain name, that the Complainant does not carry out any activity for, nor has any business with the Respondent, that the Complainant has not authorized or licensed the Respondent to use the disputed domain name or to apply for registration of it, that the disputed domain name may be considered as a typosquatted version of the Complainant's trademark and redirects users to a parking page with commercial links, the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] 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 [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] 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 [the Respondent's] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

The Panel observes that it is well established that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative. Therefore, even where a complainant is not able to demonstrate the literal application of one of the above-mentioned scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant’s trademark would also satisfy the complainant’s burden.

Indeed, taking into account the distinctiveness and well-established fame of the trademark "BOUYGUES CONSTRUCTION" (as recognized by other panels, see for example WIPO Case No. D2022-4017), which long predated the disputed domain name, it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "BOUYGUES CONSTRUCTION" when registering the disputed domain name. The Respondent should have performed an internet search, aimed at excluding possible conflicts with third party rights. Therefore, the Respondent has failed to carry out such a search and has to be considered responsible for the resulting abusive registration under the concept of wilful blindness (see, for example, WIPO Case No. D2018-1182). Consequently, this circumstance is considered by the Panel as evidence of bad faith.

The Panel accepts the Complainant's view that the disputed domain name is an example of typosquatting. This practice has been considered by UDRP panels as evidence of registration in bad faith (see, for example, WIPO case No. D2006-0845).

The Panel agrees also that directing Internet users to a web page containing commercial links, like in the present case, is evidence of use in bad faith (see, for example, WIPO case No. D2017-0890).

Moreover, other panels considered that the risk that a domain name is used for the sending and receiving of phishing emails may exist where a domain name that is confusingly similar to the Complainant’s well-known trademark has been created by the Respondent, and in the absence of the Respondent's explanation as regards the creation of the MX record (see CAC Case No. 104862). The Panel agrees with this view and considers that, in the present circumstances, the existence of a MX record for the disputed domain name supports a finding of bad faith.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the "BOUYGUES CONSTRUCTION" trademark at the time of the disputed domain name’s registration, that no response to the complaint has been filed, that the disputed domain name (which is an example of typosquatting) redirects to a webpage which contains commercial links, and the creation of the MX record, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2024-01-06

Publish the Decision