Decision for dispute CAC-UDRP-106097

Case number	CAC-UDRP-106097
Time of filing	2023-12-21 10:31:29
Domain names	bouygue-entreprises.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOUYGUES

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Sahari Muti Inc

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <bouygue-entreprises.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark, amongst others:

- International trade mark registration no. 390771, filed on 1 September 1972, for the figurative mark BOUYGUES, in classes 6, 19, 37 and 42 of the Nice Classification.

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

The Complainant further submits that the following trade mark is held by the Complainant's subsidiary Bouygues Telecom:

- French trade mark registration no. 4279119, filed on 10 June 2016, for the figurative mark BOUYGUES TELECOM ENTREPRISE, in classes 9, 16, 28, 35, 36, 37, 38, 41, 42 and 45 of the Nice Classification.

The Complainant is also the registrant of the domain name <bouyguestelecom-entreprise.com> since 2013.

The disputed domain name was registered on 16 December 2023 and, at the time of writing this decision, it resolves to a web page which features the following warning notice:

Deceptive site ahead

Attackers on bouygue-entreprises.com may trick you into doing something dangerous like installing software or revealing your personal information (for example, passwords, phone numbers or credit cards).

The particulars of the above warning notice are discussed further below, under the section 'Principal reasons for the decision' ('the Respondent's website').

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

A. Complainant's Factual Allegations

The Complainant, BOUYGUES S.A., is a diversified group of companies centred on three sectors of activity: construction, media and telecoms. The Complainant operates in over 80 countries and has reported a net profit of c. EUR 1billion.

B. Respondent's Factual Allegations

The Respondent has defaulted in this UDRP administrative proceeding and has therefore made no factual allegations.

PARTIES CONTENTIONS

A. Complainant

The Complainant's contentions can be summarised as follows:

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

The Complainant submits that the disputed domain name <bouygue-entreprises.com> is confusingly similar to the Complainant's trade mark. The suppression of the letter 's' in 'bouygue' is characteristic of a typosquatting practice intended to create confusion between the disputed domain name and the Complainant's trade mark. Besides, addition of the French generic word 'entreprises' ('companies' in English language) in the string is insufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trade mark. On the contrary, the additional generic term worsens the risk of confusion in so far as it directly refers to the Complainant's subsidiary Bouygues Telecom and its trade mark. Furthermore, the generic Top-Level Domain ('the 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 submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not known by the disputed domain name, nor does it carry out any activity for, or has any business with, the Complainant. There is no contractual arrangement 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 apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant also asserts that the Respondent's website mirrors the authentication page of Complainant's subsidiary Bouygues Telecom website; that the Respondent's website may be used for the purpose of collecting information from the Complainant's customers; and that such practice evidences the Respondent's lack of rights or legitimate interests in connection with the disputed domain name.

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

Registration

The Complainant submits that the trade mark BOUYGUES was already well-known for decades (its notoriety has been acknowledged in previous UDRP decisions, eg. CAC Case No. 103800, BOUYGUES v ERIC DENIS) and protected worldwide at the time of registration of the disputed domain name, such that it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark.

Use

The Complainant claims that the disputed domain name is not used for any bona fide offerings in so far as it is connected to a website which mimics the Complainant's subsidiary official customer portal. The Respondent's main purpose with the disputed domain name is to unduly collect sensitive data from the Complainant's customers. The Respondent's behaviour would therefore fall within the remit of paragraph 4(b)(iv) of the UDRP Policy).

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

B. Respondent

The Respondent has defaulted in this UDRP administrative proceeding and has therefore failed to advance any substantive case on the merits.

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. UDRP Threshold

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 sets out the grounds which the Complainant must establish to succeed:

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' since at least 1972.

The disputed domain name is <bouygue-entreprises.com>, and the Complainant's trade mark is BOUYGUES.

The Panel notes that the disputed domain name incorporates the Complainant's trade mark BOUYGUES, the only differences being the deletion of the keyboard letter 's' at the end of the term 'bouygues' and the French generic word 'entreprises' (whose meaning is 'companies' in the English language - see: <www.collinsdictionary.com/dictionary/french-english/entreprise>) in the disputed domain name string. In the Panel's view, these changes do not alter the distinctive character of the Complainant's trade mark.

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 administrative 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 Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

Furthermore, and compellingly, the Respondent's website contains a warning notice likely to be connected with a fraudulent activity, which is plainly not bona fide.

In view of the above reasons, the Panel finds that the Complainant has made prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

Registration

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

> • The Complainant has been using the trade mark BOUYGUES since at least 1972, whereas the disputed domain name <bouygue-entreprises.com> was registered in 2023;
>
> • The disputed domain name incorporates the Complainant's trade mark BOUYGUES in its entirety, the only differences being the deletion of the keyboard letter 's' at the end of the term 'bouygues' and the French generic term 'entreprises' (whose meaning is 'companies' in the English language) in the disputed domain name string;
>
> • UDRP panels have consistently found 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 (the WIPO Jurisprudential Overview 3.0) and the Panel accepts that the Complainant's trade mark is widely known in its segment of business;
>
> • The Respondent's lack of participation in the course of this UDRP administrative proceeding; and
>
> • The Panel additionally views the provision of false contact information as an indication of bad faith. In this instance, the Respondent appears to have adopted a false postal address.

Use

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

> (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'.

In order to determine this UDRP Policy ground, the Panel has consulted paragraph 3.1.4 (divert Internet users for commercial gain) 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 Panel considers the most conducive factors to a finding in favour of the Complainant under this UDRP Policy ground to be: (i) the actual confusion between the Complainant's trade mark BOUYGUES and the disputed domain name; (ii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (iii) the Respondent's use of false contact details (in breach of its registration agreement); (iv) the Respondent's attempt to gain reputational advantage by redirecting Internet users for a likely fraudulent purpose; and (v) the implausibility of any good faith use to which the disputed domain name may be put. The Respondent's conduct would therefore fall into the remit of paragraph 4(b)(iv) of the UDRP Policy.

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

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bouygue-entreprises.com**: Transferred

PANELLISTS

Name	Yana Zhou

DATE OF PANEL DECISION 2024-01-15

Publish the Decision