

Decision for dispute CAC-UDRP-106081

Case number	CAC-UDRP-106081
Time of filing	2023-12-18 09:25:04
Domain names	bouygue-entreprise.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	Sahari Muti Inc
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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 the following trademark registrations:

- BOUYGUES, international registration No. 390771 registered on the 1 of September 1972 for goods and services in classes 06, 19, 37 and 42;
- BOUYGUES, French registration No. 1197244, registered on 4 March 1982, for goods and services in classes 6, 16, 19, 28, 35, 37, 40, 41, 42, 43, 44 and 45.

Through its subsidiary named "Bouygues Telecom", the Complainant also owns the French trademark BOUYGUES TELECOM ENTREPRISE, registration No. 4279119, for goods and services in classes 9, 16, 28, 35, 36, 37, 38, 41, 42 and 45, registered on 30 September 2016, and the domain name <bouyguestelecom-entreprises.fr>, registered on 1 September 1999.

FACTUAL BACKGROUND

The Complainant was established in 1952 and is a diversified group of industrial companies operating in different fields, such as building, real estate, energy and services, telecom and media. The Complainant's group operates in over 80 countries worldwide and its net profit amounted to 973 million Euros in 2022.

The disputed domain name was registered on 7 December 2023 and resolves to an authentication page similar to the official authentication page of the Complainant's subsidiary BOUYGUES TELECOM.

PARTIES CONTENTIONS

COMPLAINANT

According to the Complainant, the disputed domain name is an obvious misspelling of the Complainant's trademark BOUYGUES as it fully includes this trademark but for the omission of the last letter "s". Slight spelling variations do not prevent a domain name from being confusingly similar to a complainant's trademark. Besides, the addition of the French generic term "entreprise" (company) is also not sufficient to escape a finding of likelihood of confusion. On the contrary, the addition of this term to the disputed domain name increases the confusing similarity as it refers to the Complainant's subsidiary "Bouygues Telecom".

The Complainant contends that the Respondent does not have rights or legitimate interests in the disputed domain name. In particular, the Respondent is not identified by the disputed domain name in the Whois database. Therefore, the Respondent does not appear to be commonly known by the disputed domain name. Furthermore, the Respondent is not affiliated with the Complainant, nor the Complainant ever authorized the Respondent to use the Complainant's BOUYGUES mark, including as part of the disputed domain name. The Respondent does not carry out any activity for, nor has any business with the Complainant. The disputed domain name leads to an authentication page reproducing the official authentication page of the Complainant's subsidiary "Bouygues Telecom". This page may be used to collect personal information from the Complainant's customers. This use is not a bona fide offer of services or a legitimate use of the disputed domain name, since the website misleads consumers into believing that they are accessing the Complainant's website.

Lastly, the Complainant maintains that the disputed domain name was registered and is being used in bad faith. In particular, according to the Complainant, the trademark BOUYGUES is well known and distinctive. The obvious misspelling of the Complainant's mark intends to create confusing similarity between the disputed domain name and the Complainant's mark. The disputed domain name is a prototypical example of typosquatting, which intentionally takes advantage of Internet users that inadvertently type an incorrect address. Thus, the Respondent should have known about the Complainant at the time of the registration of the disputed domain name.

Moreover, the disputed domain name resolves to an authentication page reproducing the official authentication page of the Complainant's subsidiary "Bouygues Telecom". Therefore, by using the disputed domain name the Respondent has intentionally attempted to attract for commercial purposes, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's website. In addition, the Respondent may collect personal information through its website, including passwords.

RESPONDENT:

The Respondent did not file an administratively compliant Response.

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 confusing similarity of the disputed domain name with the Complainant's mark:

The Complainant registered its trademark BOUYGUES more than 50 years before the date of registration of the disputed domain name. The disputed domain name fully includes the Complainant's trademark BOUYGUES with the sole omission of its last letter "s", and the addition of the French term "entreprise". A hyphen placed between the words "bouygue" and "entreprise" splits them. A domain name containing an obvious and intentional misspelling of the Complainant's mark is confusingly similar to this mark. Moreover, the addition of the term "entreprise" cannot prevent confusing similarity since the Complainant's mark is clearly recognizable within the disputed domain name. Pursuant to section 1.8 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". Likewise, the addition of a hyphen between the words "bouygue" and "entreprise" cannot prevent confusing similarity. On the contrary, the hyphen increases confusion, as it contributes to emphasise the Complainant's mark within the disputed domain name.

In light of the reasons explained above, the Panel finds that the first requirement under the Policy has been met.

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 Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy).

As also confirmed in the WIPO Overview 3.0, a 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 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 UDRP.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name. The Respondent is not affiliated, nor is engaged in any business with the Complainant. The Respondent is not a licensee of the BOUYGUES trademark, nor was ever authorised to include a misspelling of the Complainant's trademark in a domain name.

The disputed domain name leads to a login page displaying the trademark BOUYGUES TELECOM ENTREPRISE belonging to the Complainant's subsidiary Bouygues Telecom. This page is very similar to the login page of the Complainant's subsidiary Bouygues Telecom, accessible at "<https://cas.bouyguetelecom-entreprises.fr/cas/login>". In order to login, Internet users must insert a username and a password. Therefore, through the disputed domain name the Respondent is seeking to impersonate the Complainant and to obtain personal information through fraudulent means. It is not clear what is the real purpose behind this use, but it certainly cannot amount to a bona fide offering of goods or services or to 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..

The use of a domain name for illegal activity can never confer rights or legitimate interest on the respondent (see Section 2.13.1 of the WIPO Overview 3.0).

The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Therefore, the Panel takes the view that also the second requirement under the Policy is met.

Bad Faith:

As far as bad faith is concerned, the Panel notes that the Complainant contends that its BOUYGUES trademark enjoys reputation. The Panel tends to agree with the Complainant as to the reputation of its trademark given its longstanding and widespread use, the presence of the Complainant in various countries worldwide, the Complainant being active in various fields, and the fact that other UDRP Panels have also ascertained the reputation of the BOUYGUES mark. Moreover, the Panel finds that other factors lead to the conclusion that the Respondent was well aware of the Complainant's mark when it registered the disputed domain name. The Panel notes the addition to the disputed domain name of the French word "entreprise", which means "company" in English and is a clear reference to the Complainant's subsidiary Bouygues Telecom that uses the trademark BOUYGUES TELECOM ENTREPRISE, and the domain name <bouyguetelecom-entreprises.fr>. Furthermore, the webpage associated with the disputed domain name displays the trademark BOUYGUES TELECOM ENTREPRISES, including the logo accompanying this trademark and is almost a copy of the online login page of the Complainant's subsidiary Bouygues Telecom. These circumstances have not occurred by chance, but because the Respondent knew the Complainant and its trademark at the time of the registration of the disputed domain name. The registration of a domain name that is closely similar to a third party's well-known trademark without rights or legitimate interests amounts to registration in bad faith.

The Respondent's use of the disputed domain name is also in bad faith. The Respondent is impersonating the Complainant to mislead Internet users looking for the Complainant or its subsidiary. Through the disputed domain name, the Respondent is

attracting Internet users to its website luring them into leaving their personal sensitive data. The Respondent is therefore taking an unfair advantage of the reputation of the BOUYGUES trademark and is using the disputed domain name to intentionally attempt to attract, for some kind of personal gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. Such use of the disputed domain name is a use in bad faith.

The Panel further notes that the Respondent also registered the domain name <bouygue-entreprises.com> in 2023 and that the registration and use of this domain name was found to be in bad faith in a previous UDRP procedure (see CAC-UDRP-106097 decision of January 15, 2024).

In light of the foregoing, the Panel finds that the Complainant has established the third and last requirement of the Policy, namely that the disputed domain name was registered and has been used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

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

PANELLISTS

Name	Angelica Lodigiani
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DATE OF PANEL DECISION **2024-01-22**

Publish the Decision
