Decision for dispute CAC-UDRP-106192

Case number	CAC-UDRP-106192
Time of filing	2024-01-25 15:12:49
Domain names	bouyguebatiments-iles-de-france.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	BOUYGUES

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Gerald Jean Marcel Billion

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

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

- EU trade mark registration no. 001217223, filed on 23 June 1999, for the work mark BOUYGUES BATIMENT, in class 37 of the Nice Classification.

(Hereinafter, individually or collectively, 'the Complainant's trade mark';

'the Complainant's trade mark BOUYGUES BATIMENT'; or

'the trade mark BOUYGUES BATIMENT' interchangeably).

The Complainant also owns, through its subsidiary company Bouygues Construction S.A., a number of domain names bearing the trade mark BOUYGUES BATIMENT, including the nearly identical domain name <bouygues-batiment-ile-de-france.com>, registered in 2008. Bouygues Construction S.A. further uses the geographical term 'Île-de-France' on its official website.

At the time of writing this decision, the disputed domain name <bouyguebatiments-iles-de-france.com> resolves to a landing page headed with the disputed domain name and the message, 'Under Construction' ('the disputed domain name').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant, BOUYGUES S.A., is a diversified group of companies centered on three sectors of activity: construction, media and telecoms. The Complainant operates in over 80 countries and has reported a turnover of EUR 44.3bn in 2022.

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's Submissions

The Complainant's contentions can be summarised as follows:

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

The Complainant avers that the disputed domain name is confusingly similar to the Complainant's trade mark BOUYGUES BATIMENT, in so far as the disputed domain name incorporates the Complainant's trade mark in its entirety. The deletion of the letter 's"in the word 'bouygues', the addition of the letter 's' in the word 'batiment', and the addition of the misspelled geographical terms 'iles de France' in the disputed domain name string are insufficient to escape a finding of confusing similarity with the Complainant's trade mark BOUYGUES BATIMENT. On the contrary, both the deletion and addition of these letters and terms worsen the likelihood of confusion as they refer to the Complainant's subsidiary Bouygues Bâtiment Ile de France. Furthermore, the generic Top-Level Domain ('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 asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. Neither licence nor authorisation has been given to 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 is not known by the disputed domain name.

Lastly, the Complainant states that the disputed domain name resolves to a page under construction and it has been used in connection with a phishing scheme; and that such use of the disputed domain name is neither bona fide nor legitimate non-commercial or fair use.

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

Registration

The Complainant avers that the trade mark BOUYGUES BATIMENT is well-known and distinctive, and that its notoriety has been acknowledged in previous UDRP decisions, eg CAC Case No. 10586, BOUYGUES v 1&1 Internet Limited. Given the distinctiveness and reputation of the trade mark BOUYGUES BATIMENT, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark BOUYGUES BATIMENT.

Furthermore, the misspelling in the disputed domain name supports a finding of Respondent's bad faith registration.

Use

The disputed domain name has been used in a phishing scheme. The Respondent has attempted to pass off as one of the Complainant's employees in order to obtain undue offers from the Complainant's suppliers.

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

B. Respondent's Submissions

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's submissions are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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. General

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 the grounds which the Complainant is required to establish for the granting of the relief sought (transfer of the disputed domain name):

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 BATIMENT' since 1999.

The disputed domain name <bouyguebatiments-iles-de-france.com> was registered on 7 November 2019 and it is composed of the joint terms 'bouygue', 'batiments' and 'iles de france'.

The Complainant's trade mark BOUYGUES BATIMENT is nearly wholly incorporated into the disputed domain name. The Panel notes the following minor differences in the string, all of which however immaterial to the test under this UDRP Policy ground: i) the deletion of the letter 's' in the term 'bouygue'; ii) the addition of the letter 's' in the French word 'bâtiment'; and iii) the addition of the misspelled version of the geographical term 'Île-de-France'.

The Panel further notes that the contiguous geographical term 'Île-de-France' refers to the French region ('région administrative') encompassing Paris and vicinities. Hence, the presence of such term in the disputed domain name string enhances the association with the Complainant to the extent that it evokes the Complainant's geographical origin and seat of effective management. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

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 Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship 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 register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of the dispute, the Respondent used, or made 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.

The Respondent has failed to refute the Complainant's prima facie case that it has met its burden under the second UDRP Policy ground. Instead, there is indicium that the Respondent has attempted to impersonate the Complainant, as discussed in section D below.

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

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

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

- The Complainant's trade mark BOUYGUES BATIMENT has been registered since 1999;

- The Complainant is a French company and has its seat of effective management in Paris, France, which is the country where the Respondent appears to be domiciled;

- The Complainant's subsidiary company operates its activities through the domain name <bouygues-batiment-ile-de-france.com>, which was registered in 2008 and is nearly identical to the disputed domain name. This indicia reinforces the presumption that the Respondent registered the disputed domain name with full knowledge of the Complainant;

- The disputed domain name <bouyguebatiments-iles-de-france.com> was registered in 2019;

- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name;

- UDRP panels have consistently held 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; and

- The Respondent's default in this UDRP administrative proceeding.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in a conduct which would fall within the remit of paragraph 4(b)(iv) of the UDRP Policy:

> '(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.'

As mentioned in the above section 'Identification of Rights', the disputed domain name presently resolves to a under construction page.

Notwithstanding the above, the Panel has considered the available record and found compelling indicia that the Respondent would have attempted to impersonate the Complainant by deceiving the Complainant's business partners to obtain financial advantage thereof, through the use of email addresses nearly identical to the Complainant's. The Respondent's behaviour would therefore fall into the remit of circumstance (iv) of paragraph 4(b) of the UDRP Policy.

For the sake of completeness, the Panel has also taken stock of paragraph 3.3 (passive holding) of the WIPO Jurisprudential Overview 3.0, according to which UDRP panels have recognised various types of evidence to support a finding of bad faith on the basis of the non-use of a domain name. In the case at hand, the Panel considers the most conducive factors to a ruling in favour of the Complainant under this UDRP Policy ground to be (i) the degree of distinctiveness or reputation of the Complainant's trade mark; (ii) the Respondent's default; and (iii) the implausibility of any good faith use to which the disputed domain name may be put.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

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Accepted

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

1. **bouyguebatiments-iles-de-france.com**: Transferred

PANELLISTS

Name	**Gustavo Moser**

DATE OF PANEL DECISION 2024-02-16

Publish the Decision