# Decision for dispute CAC-UDRP-106298

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| Case number | CAC-UDRP-106298 |
| Time of filing | 2024-02-29 10:06:15 |
| Domain names | bouysgues-uk.com |

## Case administrator

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

## Complainant

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| Organization | BOUYGUES |

## Complainant representative

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| Organization | NAMESHIELD S.A.S. |

## Respondent

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| Name | Jojo Lukas |

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 International Trademark Registration Number 390771 for BOUYGUES, dated September 1, 1972 and French Trademark Registration Number 1197244 for BOUYGUES dated March 4, 1982.

FACTUAL BACKGROUND

The Complainant is a diversified group of industrial companies structured by a strong corporate culture. Its businesses are centered on four sectors of activity: Construction, Energies and services, Media and Telecoms. Operating in over 80 countries, the Complainant's net profit attributable to the Group amounted to 973 million euros. The Complainant is the owner of several registrations for the trademark BOUYGUES, such as International Trademark Registration Number 390771 for BOUYGUES, dated September 1, 1972 and French Trademark Registration Number 1197244 for BOUYGUES dated March 4, 1982. The Complainant also owns a number of related domain names including <bouygues-uk.com>, registered since January 24, 2002. The disputed domain name was registered on February 22, 2024 and resolves to a parking page. There are also mail exchange (MX) records associated with the disputed domain name.

The disputed domain name is identical or confusingly similar to the Complainant's trademark as it is an obvious misspelling thereof

adding an additional letter “s”. The domain name also adds a hyphen, the geographic abbreviation “UK”, and the “.com” TLD. Further, the disputed domain name resolves to a parked page and is thus unused. The Respondent thus has no rights or legitimate interests in the disputed domain name, it is not authorised to use the Complainant’s trademark, it is not commonly known by the name, and it is not making a bona fide or fair use of the disputed domain name. Further, typosquatting of the Complainant’s trademark for a domain name indicates that the disputed domain name was registered and is used in bad faith.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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

1. Trademark Rights and Identity or Confusing Similarity

Sufficient evidence of trademark rights in the term BOUYGUES for various industrial services has been submitted by the Complainant in the form of screenshots from the WIPO website which shows the details of its trademark registrations. As such, the Panel finds that the Complainant possesses rights in its asserted trademark.

Further, while the Complainant claims to be the owner of the domain name <bouygues-uk.com> and has provided a copy of the relevant WHOIS record, such ownership does not, of itself, serve to create any trademark rights.

Next, UDRP panels have consistently held that where the asserted trademark is recognizable within a disputed domain name, a minor misspelling does not prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy. The disputed domain name contains a misspelling of the trademark BOUYGUES adding the letter “s”. The disputed domain name further adds a hyphen, the geographic indicator „UK“ and the “.com” gTLD. Thus, the Complainant asserts that the disputed domain name is confusingly similar to the asserted trademark and will lead internet users to wrongly believe that the disputed domain name originates from or is endorsed by the Complainant. Prior panels have found confusing similarity under similar fact situations. Star Stable Entertainment AB v. Carolina Rodrigues, 103789 (CAC May 5, 2021) (“The disputed domain name [<starstsble.com>] consists of the Complainant's

whole trademark (STAR STABLE), written in a misspelled way, with an ‘s’ instead of an ‘a’ in the middle of the second word. Such misspelling is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant.”).

Furthermore, the extension “.com” typically adds little or no meaning or distinctiveness to a disputed domain name and is usually disregarded in the paragraph 4(a)(i) analysis. Novartis AG v. Wei Zhang, 103365 (CAC December 9, 2020) (“it is generally accepted that the addition of the top-level suffix in the domain name (e.g., ‘.com’) is to be disregarded under the confusing similarity test.”).

In light of the above, the Panel concludes that the Complainant possesses rights to its claimed trademark and that the disputed domain name is confusingly similar thereto under Paragraph 4(a)(i) of the Policy.

2. Rights or Legitimate Interests

The Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii). Should it succeed in that effort, the burden then shifts to Respondent to show that it does have rights or legitimate interests. See PepsiCo, Inc. v Smith power production, UDRP-102378, (CAC March 8, 2019) ("The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.").

Paragraph 4(a)(ii) of the Policy directs an examination of the facts to determine whether a respondent has rights or legitimate interest in a domain name. Paragraph 4(c) lists a number of ways in which a respondent may demonstrate that it does have such rights or interests.

The first example, under Paragraph 4(c)(i), is where “before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services”. The Panel concludes, on the basis of the Complainant's undisputed contentions, that the Respondent has not made use of the disputed domain name in connection with a bona fide offering of goods or services as noted in paragraph 4(c)(i) of the Policy. The Respondent is using the disputed domain name to resolve to a parking page that contains only messages promoting the services of its Registrar. Further, there are mail exchange (MX) records associated with the disputed domain name which could indicate its use for email phishing or other suspicious activities. Therefore, this Panel concludes that the disputed domain name seeks to divert Internet users who are trying to reach the Complainant but, due to its confusing similarity with the Complainant's trademark and perhaps its <bouygues-uk.com> domain name, either end up at the Respondent's website or may be deceived by email received from an address using the disputed domain name. Past decisions under the Policy have held that such use of the disputed domain name is not a bona fide offering of goods or services. See, e.g., DIGITAL CLASSIFIEDS FRANCE v. Cralos Ramirez Fuentes, UDRP-105639 (CAC August 17, 2023) (no bona fide use found where "the Complainant has demonstrated that the disputed domain name did not in the past, and still does not, connect to any relevant content on the Internet, but is passively held by the Respondent instead.").

The second example, under Paragraph 4(c)(ii), is a scenario in which a respondent is commonly known by the domain name. In considering this issue, relevant information can include the WHOIS record and any other assertions by a complainant regarding the nature of its relationship with a respondent. See LABORATOIRE NUXE v. Domains For Sale, UDRP-106079 (CAC January 25, 2024) (“Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name.”). See also Z&V v. Mecara Untech (Mecara Untech), UDRP-106222 (CAC February 27, 2024) (no rights or legitimate interests found where “[n]either license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark.”). The WHOIS records and provided Registrar verification for the disputed domain name identify the registrant as “Jojo Lukas”. The Complaint further states that “[n]either license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark BOUYGUES®, or apply for registration of the disputed domain name by the Complainant”. The Respondent has not participated in this case and so it does not offer any information or evidence to argue against the Complainant’s assertions. Accordingly, the Panel finds no ground upon which to conclude that the Respondent is commonly known by the disputed domain name under Policy paragraph 4(c)(ii).

As to the third example, under Paragraph 4(c)(iii) of the Policy, there is no evidence that 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 BOUYGUES trademark. As the disputed domain name resolves only to a registrar parking page and has associated MX records, this does not rebut the assertion that its use is not fair as Respondent's activity does not fit into any accepted category of fair use such as news reporting, commentary, political speech, education, nominative or generic use, etc.

In light of the above analysis, and with no Response or other submission in this case to rebut the Complainant's assertions, this Panel finds that the facts of this case do not demonstrate that the Respondent has any rights or legitimate interest in the disputed domain names under Paragraph 4(a)(ii) of the Policy.

3. Bad Faith Registration and Use

Finally, the Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and is used in bad faith under paragraph 4(a)(iii) of the Policy. Hallmark Licensing, LLC v. EWebMall, Inc., Case No. D2015-2202 (WIPO, February 12, 2016) ("The standard of proof under the Policy is often expressed as the 'balance of the probabilities' or 'preponderance of the evidence' standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true.").

The Complainant asserts that the Respondent should have known about its BOUYGUES trademark at the time it registered the disputed domain name. Actual knowledge of a complainant's trademark may form the foundation upon which to build a case for bad faith under Policy paragraph 4(a)(iii). See, Facebook, Inc. v. DNS Admin / OT NetWork, FA 1827546 (FORUM Feb. 28, 2019) ("The Panel finds on the balance of probabilities that, at the time of registration of the Domain Name, June 12, 2018, Respondent had actual knowledge of Complainant's FACEBOOK mark. The website to which the Domain Name resolved to makes direct references to Complainant."). Here, the Panel finds persuasive the Respondent's use of a typographical variation of the trademark in the disputed domain name and its mimicking of Complainant's own <bouygues-uk.com> domain name. Based on the Respondent's obvious copying of these items, the Panel concludes that it is more likely than not that the term BOUYGUES has been used in the disputed domain name with actual knowledge of the Complainant's trademark rights.

Next, the Complainant has submitted evidence that the disputed domain name resolves to a parking page that shows only promotional material for the concerned Registrar. Such activity has been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant's trademark, particularly where, as here, the trademark is unique and there is little likelihood of the disputed domain name having been created without intent to cause confusion with the asserted trademark. BOURSORAMA v. Sahad Mohammed Riviera (Sahari Muti Inc), UDRP-105427 (CAC June 15, 2023) ("a passive holding of a disputed domain name may, in appropriate circumstances, be consistent with the finding of bad faith, in particular in circumstances in which, for example, (1) the Complainant's trademark is reputed and (2) there is no conceivable use that could be made of the disputed domain name and would not amount to an infringement of the complainant's trademark's rights."). Further, typosquatting has, itself, been found to be indicative of bad faith. ARCELORMITTAL v. IASMIN KELLY DA SILVA MACIEL TAVARES, UDRP-106163 (CAC February 22, 2024) ("With respect to bad faith, the Panel notes that the Complainant's trademark is highly distinctive and that the disputed domain name includes a typosquatting of the Complainant's trademark."). Here, as the disputed domain name copies the Complainant's distinctive trademark and mimics its own legitimate domain name, the Panel in this case finds that, in accordance with paragraph 4(b)(iv) of the Policy, the disputed domain name has been used in bad faith as it resolves to a registrar parking page, exhibits typosquatting, and otherwise creates a likelihood of confusion with the BOUYGUES trademark.

Finally, the Complainant notes that the disputed domain name has been configured for mail exchange (MX) servers. Prior decisions have inferred an intent to use a disputed domain name for sending email based upon the creation of associated MX records. In The Standard Bank of South Africa Limited v. N/A / mark gersper, FA 1467014 (FORUM December 5, 2012), the Panel noted that the "Complainant contends this phishing could be carried out via email and not just through a website. Complainant has examined the domain name's MX records and they apparently allow the transmission of email, which would not be necessary if the domain name was merely parked. The Panel finds Complainant's allegations about the possibility of Respondent using the disputed domain name for phishing sufficient…"). This inference has been adopted in other decisions. See, e.g., BOURSORAMA v. jaqh ehri, UDRP-106241 (CAC March 20, 2024) ("The activation of MX records to designate an email server and enable email is an action that goes beyond the mere registration of the disputed domain name and indicates that the Respondent has associated the disputed domain name with email servers, which creates a risk that the Respondent may use the disputed domain name for misrepresentation and/or phishing and spamming activities."). In the present case, the Complainant submits a screenshot showing that an MX record has been created for the disputed domain name thus indicating that it may be used for the sending and receiving of phishing e-mails. While, in the abstract, the creation of such record does not indicate any ill intent, in the circumstances of the present case where a domain name that is confusingly similar to the Complainant's distinctive trademark, and particularly also similar to its own legitimate domain name, has been created by the Respondent, this MX record does require some further explanation which the Respondent has not provided. As such, the Panel finds that the existence of an MX record for the disputed domain name further supports the conclusion that it has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy.

In light of the above, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) and that the disputed domain name has been registered and 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. **bouysgues-uk.com**: Transferred

## PANELLISTS

| Name | **Steven Levy** |
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DATE OF PANEL DECISION 2024-03-28

Publish the Decision