Decision for dispute CAC-UDRP-108052

Case number	CAC-UDRP-108052
Time of filing	2025-10-15 09:45:55
Domain names	bouyguesconstruction-au.com

Case administrator

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

Complainant

Organization	BOUYGUES

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Domain Administrator

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 several trademarks for BOUYGUES CONSTRUCTION, such as the international trademark BOUYGUES CONSTRUCTION n°732339 registered since April 13, 2000 and the European trademark BOUYGUES CONSTRUCTION n°001589159 registered since May 16, 2001.

FACTUAL BACKGROUND

Complainant avers that it was founded by Francis Bouygues in 1952, that it is a diversified group of industrial companies structured by a strong corporate culture, and that its businesses are centred on four sectors of activity: Construction, Energies and services, Media and Telecoms. The Group operates in over 80 countries and its net profits attributable to the Group amounted to €1,058m.

Its subsidiary BOUYGUES CONSTRUCTION is a world player in the fields of building, public works, energy, and services. As a global player in construction and services, BOUYGUES CONSTRUCTION designs, builds and operates buildings and structures which improve the quality of people's living and working environment: public and private buildings, transport infrastructures and energy and communications networks.

As leader in sustainable construction, the Group and its 35,600 employees have a long-term commitment to helping their customers shape a better life. The Complainant also owns, through its subsidiary, a number of domain names including the same distinctive

wording BOUYGUES CONSTRUCTION such as <bouyguesconstruction.com>, registered since May 10, 1999.

PARTIES CONTENTIONS

COMPLAINANT:

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

The Complainant states that the disputed domain name <bouyguesconstruction-au.com>, which was registered on October 9, 2025 resolves to a parking page with commercial links. It also contends that MX servers are configured. Further, the disputed domain name is confusingly similar to its trademark BOUYGUES CONSTRUCTION as the term "Bouygues Construction" is identical to the Complainant's trademark. The Complainant contends further that it has no business relationship with Respondent, did not authorize it to register the disputed domain name, and states that the Respondent is in violation of the Policy.

The Complainant asserts that the addition of the geographical term “-au” for “AUSTRALIA” is not sufficient to avoid the likelihood of confusion as it does not change the overall impression of the designation as being connected to the Complainant’s trademark. Thus, there is a likelihood of confusion between the disputed domain name and the Complainant’s trademark. Finally, the Complainant contends that the Respondent registered and is using the disputed domain name in bad faith.

RESPONDENT:

The Respondent has not appeared formally or informally to controvert the evidence submitted by the Complainant.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
(ii) the respondent has no rights or legitimate interests in respect of the domain name; and
(iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Czech Arbitration Court has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case and defend its registration of <buoyguesconstruction-au .com>.

By the Rules, paragraph 5(c)(i), respondent is expected to: "Respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ..." Notwithstanding Respondent's default Complainant is not relieved from the burden of establishing its claim. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3.0, Sec. 4.3: "Noting the burden of proof on the complainant, a respondent's default (i.e., failure to submit a formal response) would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true." However, if a complainant's adduced evidence supports any element of the Policy, a respondent has an opportunity to contest the contention that its registration of the challenged domain name was unlawful.

A. The disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights; §4(a)(i)

This first limb of the Policy requires Complainant to prove that it has a trademark right and that the disputed domain name is identical or confusingly similar to that mark. The Panel finds that Complainant has demonstrated that it has a registered trademark right to the term BOUYGUES CONSTRUCTION. Having established that element of the Policy the next question is whether the disputed domain name is identical or confusingly similar to Complainant's mark. A side-by-side comparison of the domain name and the BOUYGUES CONSTRUCTION trademark demonstrates that <buoyguesconstruction-au.com> is confusingly similar to the mark in that it correspondents entirely to the Complainant's trademark with the addition of the geographic designation “au”.

At the threshold it is necessary only to consider "whether a domain name is similar enough in light of the purpose of the Policy to justify moving on to the other elements of a claim for cancellation or transfer of a domain name." The Panel in Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party, D2000-1415 (WIPO January 23, 2001) notes that "numerous prior panels have held [the purposes of the Policy are satisfied] when a domain name wholly incorporates a complainant's registered mark." Similarly, Magnum Piering, Inc. v The Mudjackers and Garwood S. Wilson, Sr., D2000-1525 (WIPO January 21, 2001). Panelists generally disregard the top-level suffixes as functional necessities; thus the top-level extension is irrelevant in determining the issue under the first requirement of the Policy.

The generic Top-Level Domain “.com” in the first level portion of the disputed domain name is a standard registration requirement and should be disregarded when assessing whether a domain name is confusingly similar to the trademark in which the Complainant has rights (see Credit Mutuel Arkea v. Domain Administration, CAC Case No. 102345); also F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. WIPO Case No. D2006-0451 (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”).

Accordingly, having demonstrated that the disputed domain name is confusingly similar to Complainant's BOUYGUES CONSTRUCTION trademark the Panel finds Complainant has satisfied Para. 4(a)(i) of the Policy.

B. Rights and legitimate interests, §4(a)(ii)

Under paragraph 4(a)(ii) of the Policy, a complainant has the burden of establishing that a respondent lacks rights or legitimate interests in respect of the disputed domain name, but this burden is light. It is sufficient in the first instance for Complainant to allege a prima facie case, and if the evidence presented is persuasive or yields a positive inference that Respondent lacks rights or legitimate interests, the burden shifts to Respondent to rebut the allegations. This concept of shifting burdens is clearly explained in Croatia Airlines d.d. v. Modern Empire Internet Ltd., D2003-0455 (WIPO August 21, 2003) in which the Panel held that "[s]ince it is difficult to prove a negative [. . .] especially where the Respondent, rather than complainant, would be best placed to have specific knowledge of such rights or interests—and since Paragraph 4(c) describes how a Respondent can demonstrate rights and legitimate interests, a Complainant's burden of proof on this element is light."

The Panel finds that the Complainant has presented a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Once the complainant makes such prima facie showing, "the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. Once the burden shifts, Respondent has the opportunity of demonstrating its right or legitimate interest by showing the existence of any of the following nonexclusive circumstances:

(i) before any notice to you [respondent] 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; or
(ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [respondent] are making a legitimate non-commercial 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.

If a respondent proves any of these circumstances or indeed anything else that shows it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the respondent must succeed. However, if the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP," Malayan Banking Berhad v. Beauty, Success & Truth International, WIPO Case No. D2008-1393 (December 8, 2008). Finally, "in the absence of direct evidence [which in this case there is none], complainant and the panel must resort to reasonable inferences from whatever evidence is in the record," Euromarket Designs, Inc. v. Domain For Sale VMI, WIPO

Case No. D2000-1195.

The Respondent has not appeared in this case. The Complainant avers that it has not granted any rights to Respondent to use the BOUYGUES CONSTRUCTION trademark, nor is “Kristaps Ronka” (the disclosed name of Respondent) known by the name of disputed domain name. See Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group, FA1804001781783 (Forum May 11, 2018) ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group. The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name."). As it is evident that Kristaps Ronka is not commonly known by the disputed domain name it cannot claim any right or legitimate interests under Policy 4(c)(ii). See also Amazon Technologies, Inc. v. Suzen Khan / Nancy Jain / Andrew Stanzy, FA 1741129 (FORUM August 16, 2017) (finding that respondent had no rights or legitimate interests in the disputed domain names when the identifying information provided by WHOIS was unrelated to the domain names or respondent's use of the same).

Finally, there is no evidence of legitimate noncommercial or fair use of the domain name. Since there is no proof otherwise, the record supports the conclusion that Respondent lacks any right or legitimate interest as measured by the three circumstances of paragraph 4(c). See Deutsche Telekom AG v. Britt Cordon, D2004-0487 (WIPO September 13, 2004) (holding that "once a complainant establishes a prima facie case that none of the three circumstances establishing legitimate interests or rights applies, the burden of production on this factor shifts to the Respondent. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP). Similarly, in Malayan Banking Berhad, supra. (holding that "[i]f the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.").

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

C. Registered and Used in Bad Faith, §4(a)(iii)

Having determined that Respondent lacks rights or legitimate interests, the Complainant must then prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith. The consensus expressed in WIPO Overview 3.0, section 3.1.4. is that "the mere registration of a domain name that is identical or confusingly similar [. . .] to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith."

Absent a cogent explanation from Respondent justifying its choice of domain name, this supports the conclusion that it registered the disputed domain name with the purpose of taking advantage of the goodwill and reputation accruing to Complainant's trademark. Whatever value the disputed domain name may have is directly related to the goodwill Complainant has established for its trademark in the international marketplace.

Paragraph 4(b) of the Policy sets out four nonexclusive circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. Of the four nonexclusive circumstances, paragraph 4(b)(iv) most readily applies:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 site or location.

The structure of the disputed domain name in this case – incorporating in its second level the identical name of the Complainant’s trademark BOUYGUES CONSTRUCTION along with the additional word “-au” – is suggestive of an association with Complainant that it does not have. See Royal Bank of Canada - Banque Royale Du Canada v. Registration Private, Domains By Proxy, LLC / Randy Cass, WIPO Case No. D2019-2803 ("[W]here the facts of the case establish that the respondent’s intent in registering or acquiring a domain name was to unfairly capitalize on the complainant’s nascent [. . .] trademark, panels have been prepared to find the respondent acted in bad faith".) Such actions are clearly intended to exploit the trust and recognition associated with the reputable brand for the Respondent's own benefit.

Prior UDRP panels have established that the trademark BOUYGUES CONSTRUCTION is well-known. See CAC case No. 101387, BOUYGUES v. Laura Clare <bouygeus-construction.com> (“Here only two characters of the disputed domain name are different from the Complainant's well known registered mark [BOUYGUES CONSTRUCTION]”). Thus, given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademarks. See Ferrari S.p.A v. American Entertainment Group. Inc. WIPO Case No. D2004-0673.

Furthermore, the disputed domain name points to a parking page with commercial links. The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to his own website, which is some evidence of bad faith. See StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC WIPO Case No. D2018-0497 ((“In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves.

The Panel agrees with the Complainant in concluding that the evidence establishes that the disputed domain name was registered and is being used in bad faith. See Auchan Holding SA v. WhoisGuard Protected / WhoisGuard, Inc. / Daniel Morgan, WIPO Case No.

D2021-0797 (“The evidence outlined above that the Respondent is falsely suggesting he is connected and/or authorised by the Complainant in order to gather personal information for phishing purposes is evidence that the Responded has acted in opposition to the Complainant’s commercial interests and has unduly disrupted the business of the Complainant.”) See also WIPO Overview 3.0, Sec. 3.3: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, . (ii) the failure of the respondent . . . to provide any evidence of actual or contemplated good-faith use, . . . and (iv) the implausibility of any good faith use to which the domain name may be put.”

While the disputed domain name has been set up with MX records suggesting that it may be actively used for e-mail purposes, the Complainant has proffered no evidence that it is. Under these circumstances, it is not necessary to address this speculation to conclude that the disputed domain name was registered and is being used in bad faith. See JCDECAUX SA v. Handi Hariyono CAC Case No. 102827 (“It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”).

The Panel finds that the Complainant has adduced more than sufficient evidence that the Respondent registered and is using the disputed domain name in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b)(iv) as well as within the larger notion of abusive conduct.

Accordingly, having thus demonstrated that Respondent registered and is using the disputed domain name in bad faith, Complainant has also satisfied paragraph4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **bouyguesconstruction-au.com**: Transferred

PANELLISTS

Name	**Gerald Levine Ph.D, Esq.**

DATE OF PANEL DECISION 2025-11-10

Publish the Decision