

Decision for dispute CAC-UDRP-103800

Case number	CAC-UDRP-103800
Time of filing	2021-05-12 09:41:51
Domain names	bouyges-travaux.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	BOUYGUES
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Complainant representative

Organization	Nameshield (Laurent Becker)
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Respondent

Name	ERIC DENIS
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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 several trademarks BOUYGUES, such as the international trademark registration number 390771 registered on September 1, 1972 and the French trademark registration number 1197244 registered on March 4, 1982.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant was founded in 1952. Its businesses are centered on three sectors of activity: construction, with Bouygues Construction, Bouygues Immobilier, and Colas; and telecoms and media, with French TV channel TF1 and Bouygues Telecom. Operating in nearly 90 countries, the Complainant's net profit attributable to the Group amounted to 696 million euros. The disputed domain name <bouyges-travaux.com> was registered on April 27, 2021 and redirects Registrar parking page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

i) The Complainant has rights in trademark BOUYGUES (e.g., the international trademark registration number 390771 registered on September 1, 1972 and the French trademark registration number 1197244 registered on March 4, 1982). The disputed domain name is confusingly similar to the Complainant's trademark BOUYGUES.

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not commonly known by the disputed domain name; the Respondent is not related in any way with the Complainant; the Complainant does not carry out any activity for, nor has any business with the Respondent; and neither license nor authorization has been granted to the Respondent to make any use or registration of the Complainant's trademark.

iii) The Respondent has registered and is using the disputed domain name in bad faith: the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark; the disputed domain name redirects to the registrar parking page; the Respondent intentionally attempts to attract, for commercial gain, Internet users to Respondent's website or other online location by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of Respondent or of a product or service on Respondent's website; and although the disputed domain name appears to be unused, it suggests that it may be actively used for email purposes.

RESPONDENT:

The Respondent did not submit a 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

Rights

The Complainant contends that it has rights in trademark BOUYGUES (e.g., the international trademark registration number 390771 registered on September 1, 1972 and the French trademark registration number 1197244 registered on March 4, 1982). Registration of a mark with the WIPO and a national trademark registration agency sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the mark BOUYGUES.

The Complainant further contends that the disputed domain name <bouyges-travaux.com> is confusingly similar to its trademark BOUYGUES. The disputed domain name incorporates the Complainant's mark in its entirety. The addition of French term "travaux" (meaning "construction" in English) and the new gTLD suffix ".com" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademark and does not change the overall impression of the designation as being connected to its trademark.

The Panel agrees with the Complainant, and thus it finds that the disputed domain name is confusingly similar to the Complainant's trademark BOUYGUES.

No 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 paragraph 4(a)(ii) of the Policy, then the burden shifts to the Respondent to show it does have rights or legitimate interests. See *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 (the 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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy). See also *Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy paragraph 4(a)(ii) of the Policy).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name: the Respondent is not identified in the Whois database as the disputed domain name, and thus it is not commonly known by the disputed domain name; the Respondent is not affiliated with nor authorized by the Complainant in any way; the Complainant does not carry out any activity for, nor has any business with the Respondent; neither 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; and the Respondent has no demonstrable plan to use the disputed domain name.

The Panel notes that the Respondent has been identified as 'Eric Denis' and no information suggests that the Complainant has authorized the Respondent to use the BOUYGUES mark in any way. Therefore, the Panel finds that the Respondent is not commonly known by the disputed domain name under paragraph 4(c)(ii) of the Policy.

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.

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its

website or other online 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.

The Complainant contends that the disputed domain name is confusingly similar to its well-known and distinctive trademark and the domain name associated. Consequently, given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark.

While constructive knowledge is insufficient to support a finding of bad faith, actual knowledge can be used to demonstrate a respondent's bad faith registration and use. See *Orbitz Worldwide, LLC v. Domain Librarian*, FA 1535826 (Forum February 6, 2014- "The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding bad faith per paragraph 4(a)(iii) of the Policy, the Panel here finds actual knowledge through the name used for the domain and the use made of it."). The Panel infers, due to the notoriety of the Complainant's mark that the Respondent registered the disputed domain name with actual knowledge of the Complainant's rights in the BOUYGUES mark and finds that it registered the disputed domain name in bad faith per paragraph 4(a)(iii) of the Policy.

Furthermore, the Complainant argues that the disputed domain name redirects to the registrar parking page. The Complainant contends that the Respondent intentionally attempts to attract, for commercial gain, Internet users to Respondent's website or other online location by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of Respondent or of a product or service on Respondent's website. The Complainant additionally contends that although the domain name appears to be unused, it suggests that it may be actively used for email purposes.

The Panel observes that parking a confusingly similar domain name can evince bad faith per paragraph 4(a)(iii) of the Policy. See *VideoLink, Inc. v. Xantech Corporation*, FA1503001608735 (Forum May 12, 2015) ("Failure to actively use a domain name is evidence of bad faith registration and use pursuant to paragraph 4(a)(iii) of the policy."). Accordingly, the Panel agrees and finds that the Respondent's use of the disputed domain name to host a parking page provides evidence of bad faith given the notoriety of the Complainant's mark per paragraph 4(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. **BOUYGES-TRAVAUX.COM**: Transferred

PANELLISTS

Name	Mr. Ho-Hyun Nahm, Esq.
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DATE OF PANEL DECISION 2021-06-07

Publish the Decision