

ADMINISTRATIVE PANEL DECISION

**Bouygues v. Contact Privacy Inc. Customer 0163367641 /
Gerald Jean Marcel Billion
Case No. D2022-0023**

1. The Parties

The Complainant is Bouygues, France, represented by Nameshield, France.

The Respondent is Contact Privacy Inc. Customer 0163367641, Canada / Gerald Jean Marcel Billion, France.

2. The Domain Name and Registrar

The disputed domain name <bouyguetravauxpublicsfr.com> (the “Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 4, 2022. On January 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 5, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 13, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on January 13, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 22, 2022.

The Center appointed Vincent Denoyelle as the sole panelist in this matter on March 2, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The following facts are based on the submissions in the Complaint and the Annexes to the Complaint.

The Complainant is a diversified group of companies headquartered in France and active in three main sectors namely construction, telecom, and media.

The Complainant is the owner of several trade marks for BOUYGUES and BOUYGUES TRAVAUX PUBLICS including the following:

- International Registration No. 390771, BOUYGUES, registered on September 1, 1972 and;
- International Registration No. 1234824, BOUYGUES TRAVAUX PUBLICS, registered on September 22, 2014.

The Complainant is also the owner of several domain names reflecting its trade mark such as <bouygues-travaux-publics-region.com>.

The Domain Name was registered on December 26, 2021 and resolves to a landing page.

5. Parties' Contentions

A. Complainant

The Complainant contends that the Domain Name is confusingly similar to the BOUYGUES and BOUYGUES TRAVAUX PUBLICS trade marks in which the Complainant has rights as the Domain Name incorporates the entire BOUYGUES and BOUYGUES TRAVAUX PUBLICS trade marks with the addition of the abbreviation "fr" (for "France") and that such addition to the Domain Name does not prevent the likelihood of confusion between the Domain Name and the Complainant's trade marks.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the Domain Name. The Complainant contends that the Respondent is not commonly known by the Domain Name given that the Whois information is not similar to the Domain Name. The Complainant states that the Respondent is not affiliated with the Complainant or authorized by the Complainant in any way to use the Complainant's trade marks. The Complainant also states that it does not carry out any activity for, or has any business with the Respondent. Finally, the Complainant points out that the Domain Name resolves to a parking page and that the Respondent did not make any use of the Domain Name since its registration and there is no indication that the Respondent has made any plan to use the Domain Name.

The Complainant contends that the Respondent has registered the Domain Name in bad faith, with full knowledge of the Complainant's trade mark BOUYGUES which is well-known. The Complainant also alleges that the Respondent is using the Domain Name in bad faith. The Complainant submits that given the renown of its BOUYGUES trade mark, no actual or contemplated use of the Domain Name could reasonably be considered as being in good faith. The Complainant also points to the fact that the Domain Name has been set up to allow the sending of emails which constitutes a threat hanging over the Complainant's head.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

In order to prevail the Complainant must substantiate that the three elements of paragraph 4(a) of the Policy have been met, namely:

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Domain Name has been registered and is being used in bad faith.

In the case of default by a party, as is the case here, paragraph 14(b) of the Rules makes it clear that if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

In the absence of a Response from the Respondent whereby the Respondent did not object to any of the contentions from the Complainant, the Panel will have to base its decision on the basis of the Complaint and supporting Annexes.

A. Identical or Confusingly Similar

In light of the evidence provided by the Complainant, the Panel is satisfied that the Complainant has substantiated that it holds valid trade mark rights in BOUYGUES and BOUYGUES TRAVAUX PUBLICS, which are reproduced in the Domain Name.

The second point that has to be considered is whether the Domain Name is identical or confusingly similar to the trade marks BOUYGUES and BOUYGUES TRAVAUX PUBLICS in which the Complainant has rights.

At the second level, the Domain Name incorporates the Complainant's BOUYGUES and BOUYGUES TRAVAUX PUBLICS trade marks in their entirety with the addition of the letters "fr". The Panel finds that this addition does not prevent a finding of confusing similarity between the Complainant's trade marks and the Domain Name. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)").

Then there is the addition of the generic Top-Level Domain ("gTLD") ".com". As is generally accepted, the addition of a gTLD, such as ".com", is merely a technical registration requirement and as such is typically disregarded under the first element confusing similarity test.

Thus, the Panel finds that the Domain Name is confusingly similar to a trade mark or service mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out relevant circumstances that could demonstrate that a respondent has rights or legitimate interests in a domain name, namely:

Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate

interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to [the respondent] of the dispute, [the respondent's] 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) [the respondent] (as an individual, business, or other organization) ha[s] been commonly known by the domain name, even if [the respondent] ha[s] acquired no trade mark or service mark rights; or
- (iii) [the respondent] is 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 trade mark or service mark at issue.

Numerous previous panels have found under the UDRP that once the Complainant makes a *prima facie* showing that the Respondent does not have rights or legitimate interests in the domain name, the burden of production shifts to the Respondent to rebut the showing by providing evidence of its rights or interests in the domain name.

Having reviewed the Complainant's assertions and evidence, the Panel is satisfied that the Complainant has made a *prima facie* showing that the Respondent lacks rights or legitimate interests in the Domain Name.

The Complainant has stated that it does not know the Respondent and that it has not licensed or otherwise authorized the Respondent to make any use of its trade mark BOUYGUES. There is no indication that the Respondent is commonly known by the Domain Name.

Given the significant renown of the Complainant's trade mark BOUYGUES (especially in the country of residence of the Respondent), as previously found by several panels under the UDRP and, more specifically, the fact that the Domain Name also reproduces the trade mark BOUYGUES TRAVAUX PUBLICS, it is inconceivable that the Respondent could substantiate any actual or contemplated *bona fide* or legitimate use of the Domain Name.

Furthermore, the nature of the Domain Name, comprising the Complainant's trade marks in their entirety in combination with the letters "fr" – an apparent abbreviation for "France", where the Complainant is headquartered, carries a risk of implied affiliation. See section 2.5.1 of the [WIPO Overview 3.0](#).

Thus, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a number of relevant non-exhaustive circumstances, which can be deemed to constitute evidence of registration and use of a domain name in bad faith, namely:

- (i) circumstances indicating that [the respondent has] registered or acquired [a disputed] 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 trade mark or service mark or to a competitor of that 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 trade mark 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 [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 respondent's] website or location.

Given the circumstances described in the Complaint and the documentary evidence provided by the Complainant, the Panel finds that the Domain Name was registered in bad faith.

The Domain Name reproduces the exact BOUYGUES and BOUYGUES TRAVAUX PUBLICS trade marks of the Complainant and this cannot be a coincidence given the overall circumstances of the present case including (i) the renown of the Complainant's BOUYGUES trade mark, as substantiated by the Complainant and acknowledged by several previous UDRP panels, (ii) the fact that the Respondent appears to be based in France where the Complainant is headquartered and where its renown is higher than anywhere else, and (iii) the fact that the Domain Name was registered relatively recently and many years after the registration of the trade marks BOUYGUES and BOUYGUES TRAVAUX PUBLICS.

Thus, the Panel finds that the Domain Name was registered in bad faith.

As for use of the Domain Name in bad faith, given the circumstances described in the Complaint and the evidence provided by the Complainant, the Panel considers that the Domain Name is used in bad faith.

The Domain Name appears to be passively held as it resolves to a default landing page. Passive use itself does not cure the Respondent's bad faith given the overall circumstances here, specifically the renown of the Complainant's BOUYGUES trade mark, especially in the country where the Respondent appears to be based and the Respondent's default.

In addition, the DNS setup of the Domain Name (with active MX records), along with the composition of the Domain Name, lead the Panel to consider that the Domain Name could be used to deceive Internet users. In these circumstances, the Domain Name constitutes a potential threat hanging over the head of the Complainant.

The fact that the Respondent chose not to object to the Complainant's assertions can only reinforce the Panel's view that the Domain Name is used in bad faith.

Thus, the Panel finds that the Domain Name has been registered and is also being used in bad faith.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <bouyguetravauxpublicsfr.com> be transferred to the Complainant.

/Vincent Denoyelle/

Vincent Denoyelle

Sole Panelist

Date: March 16, 2022