

## **ADMINISTRATIVE PANEL DECISION**

**Bouygues v. Contact Privacy Inc. Customer 7151571251/ Frank McClosky  
Case No. D2022-2401**

### **1. The Parties**

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

The Respondent is Contact Privacy Inc. Customer 7151571251, Canada/ Frank McClosky, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <bouygues-comstruction.com> is registered with Google LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 1, 2022. On July 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 1, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 4, 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 July 5, 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 July 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 3, 2022.

The Center appointed Geert Glas as the sole panelist in this matter on August 10, 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 Complainant, founded by Francis Bouygues in 1952, is a diversified group of industrial companies which currently operates in 81 countries. Its businesses are centered on three sectors: construction, telecoms and media.

Its subsidiary Bouygues Construction is active in the fields of building, public works, energy and services (see their website “www.bouygues-construction.com”). As a global player in construction and services, Bouygues Construction designs, builds and operates buildings and structures, transport infrastructures and energy and communication networks.

The Complainant is the owner of numerous BOUYGUES trademarks, of which the oldest is the International trademark BOUYGUES No. 390770, registered since September 1, 1972.

The Complainant is also the owner of the International trademark BOUYGUES CONSTRUCTION No. 732339, registered since April 13, 2000.

The Complainant’s subsidiary Bouygues Construction also owns and uses a number of domain names which consist of the trademark BOUYGUES CONSTRUCTION, such as <bouygues-construction.com>, registered since May 10, 1999.

The disputed domain name was registered on June 27, 2022, and resolves to an inactive page.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant requests that the disputed domain name be transferred to it on the following grounds:

The Complainant claims that the disputed domain name is confusingly similar to its many trademarks which consist of or include the words “bouygues construction” or “bouygues”. It considers that the presence of a letter “M” rather than a letter “N” as the third letter of the word “construction” in the disputed domain name makes no difference to the overall impression of the disputed domain name, and constitutes a classic example of “typosquatting”. The Complainant also highlights its international presence and the reputation associated with the name “bouygues”.

The Complainant further contends that the Respondent does not have rights or legitimate interests in respect of the disputed domain name. According to the Complainant, it has never authorized, licensed or otherwise permitted the Respondent to use its trademarks, nor is it aware of any use which the Respondent would have made of any name corresponding to the disputed domain name. The Complainant is also not aware of the Respondent being commonly known by the disputed domain name.

Finally, the Complainant argues that the disputed domain name was registered and is being used in bad faith. The widespread use and reputation of the name “bouygues” as well as the absence of any legitimate interests are invoked to reach this conclusion. According to the Complainant, the Respondent will never be capable of using for a legitimate purpose as the notoriety of the name “bouygues” is so widespread that members of the public confronted with the use of the disputed domain name by the Respondent will always assume that there is an association between the Respondent and the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer the disputed domain name. As the UDRP proceedings are of an administrative nature, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- i. the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 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.

The Panel will therefore deal with each of these requirements.

### **A. Identical or Confusingly Similar**

The Complainant contends that the disputed domain name is confusingly similar to its trademarks BOUYGUES and BOUYGUES CONSTRUCTION.

The disputed domain name consists exclusively of the Complainant's registered trademark BOUYGUES CONSTRUCTION, except for the presence of a letter "m" as the 11th letter rather than a letter "n", and the addition of a hyphen between BOUYGUES and "construction". The Panel is of the opinion that this substitution of the letter "N" by the letter "M" does not prevent the finding that the disputed domain name is confusingly similar to the Complainant's BOUYGUES CONSTRUCTION trademark.

Moreover, this does seem to be a case of "typosquatting", *i.e.* a domain name which contains an obvious misspelling of a third party's trademark.

It follows from section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. The Panel considers that the disputed domain name is an obvious misspelling of the Complainant's trademark BOUYGUES CONSTRUCTION as it merely replaces the letter "n" by the letter "m" and is otherwise identical to the Complainant's trademark (except for the addition of a hyphen). The fact that on a QWERTY keyboard, "n" and "m" are adjacent keyboard letters reinforces this finding.

Furthermore, section 1.11.1 of [WIPO Overview 3.0](#) states that a generic Top-Level Domain ("gTLD") in a domain name, such as ".com", is viewed as a standard registration requirement and as such has to be disregarded in this assessment.

Consequently, the Complainant has proven that the disputed domain name is confusingly similar to its trademarks, and in doing so has satisfied the first element under paragraph 4(a) of the Policy.

## **B. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires the complainant to demonstrate that the respondent has no rights or legitimate interests in the domain name. Paragraph 4(c) of the Policy sets out a list of non-exhaustive circumstances that may suggest that a respondent has rights or legitimate interests in a domain name, including but not limited to:

(i) 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; or

(ii) you (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 are making a legitimate noncommercial 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.

The complainant is required to make a *prima facie* case that the respondent does not have rights or legitimate interests in the disputed domain name.

The Complainant states that, to the best of its knowledge, the Respondent has not registered any trademarks for BOUYGUES and BOUYGUES CONSTRUCTION, nor is the Respondent commonly known or has ever been known by any related terms. The Complainant also cannot find any evidence to suggest that the Respondent retains unregistered trademark rights in such terms.

The Complainant also contends that the Respondent is not affiliated to the Complainant, nor authorized, licensed, or otherwise permitted to use the Complainant's trademarks.

The Panel finds that there is no indication that the Respondent would have made a use of the disputed domain name in connection with a *bona fide* offering of goods and services. The disputed domain name actually does not resolve to an active web page. The Panel also finds that there is no indication that the Respondent would be linked to the Complainant or would be commonly known by the disputed domain name.

Given that the Respondent did not reply to the Complaint, and by doing so opted not to seize the opportunity to demonstrate that it would have any rights or legitimate interests in respect of the disputed domain name, the Panel considers that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interest in respect of the disputed domain name and has satisfied its burden of proof under this element of the Policy.

As such the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name and that the Complainant has satisfied the second limb under paragraph 4(a) of the Policy.

## **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy requires the Complainant to demonstrate that the disputed domain name was registered and is being used in bad faith. Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that may indicate bad faith, including but not limited to:

(i) circumstances indicating that you have registered or you have 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 complainant, for valuable consideration

in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

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

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

#### **(a) Registered in bad faith**

The Complainant has been benefitting from trademark protection for its BOUYGUES and BOUYGUES CONSTRUCTION trademarks for several decades. Moreover, these trademarks are distinctive and enjoy a substantial international reputation in the construction sector.

Panels have consistently found that the mere registration of a domain name that is virtually identical to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith (section 3.1.4, [WIPO Overview 3.0](#); *Barclays Bank PLC v. PrivacyProtect.org / Sylvia Paras*, WIPO Case No. [D2011-2011](#)). This is particularly true where the registered trademark has a highly distinctive character and has acquired a certain reputation. The conduct of "typosquatting" of which the disputed domain name is an example has been recognized as evidence of bad faith registration *per se* (*Paragon Gifts, Inc. v. Domain.Contact*, WIPO Case No. [D2004-0107](#); *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#)).

The invoked trademarks of the Complainant had been widely known for a long time when the Respondent took the decision to register the disputed domain name. The fact that the Respondent chose to register the disputed domain name (while exchanging the letter "n" for a letter "m") anyway and opted not to offer any explanation in response to the complaint, strongly suggests that the decision to register the disputed domain name was made in bad faith.

#### **(b) Used in bad faith**

The disputed domain name was not resolving to an active website at the time of filing. However, the consensus view amongst UDRP panelists is that the apparent lack of so-called active use (*e.g.* to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith (see section 3.3 of the [WIPO Overview 3.0](#)). In this case, the Panel is convinced that the overall circumstances of this case do suggest that the Respondent's non-use of the disputed domain name is in bad faith.

Circumstances which in the current case lead to this conclusion include the following:

(i) The degree of distinctiveness and reputation of the Complainant's BOUYGUES CONSTRUCTION trademark which has a strong reputation and is widely known.

(ii) The failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use.

(iii) The implausibility of any good faith use to which the disputed domain name may be put by the Respondent.

(iv) The nature of the disputed domain name which constitutes a good example of “typosquatting”, and its similarities with the domain name of the Complainant’s subsidiary (<bouygues-construction.com>). As such, the Panel holds that the Complainant has made out its case that the disputed domain Name was registered and is being used in bad faith under the Policy, paragraph 4(a)(iii).

## **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 disputed domain name <bouygues-comstruction.com> be transferred to the Complainant.

*/Geert Glas/*

**Geert Glas**

Sole Panelist

Date: August 25, 2022