

ADMINISTRATIVE PANEL DECISION

Bouygues v. 徐林楠 (lin nan xu)
Case No. D2022-4017

1. The Parties

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

The Respondent is 徐林楠 (lin nan xu), China.

2. The Domain Name and Registrar

The disputed domain name <in-pulse-bouygues-construction.com> is registered with West263 International Limited (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 26, 2022. On October 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 28, 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 October 28, 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 in English on October 28, 2022.

On October 28, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On October 28, 2022, the Complainant submitted its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on November 3, 2022. In accordance with

the Rules, paragraph 5, the due date for Response was November 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on November 24, 2022.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on November 28, 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 was founded by Francis Bouygues in 1952, and is a diversified group of industrial companies operating in various industries, including: construction, with Bouygues Construction, Bouygues Immobilier, and Colas; and telecoms and media, with French TV channel TF1 and Bouygues Telecom. The Complainant operates in 81 countries, has a profit attributable to its group of EUR 1,125 million and employs 52,800 people. The Complainant's subsidiary Bouygues Construction is particularly active in the fields of building, public works, energy, and services.

The Complainant provides evidence that it owns a large trademark portfolio for BOUYGUES and BOUYGUES CONSTRUCTION, including, but not limited to, International Trademark Registration number 390770 for BOUYGUES, registered on September 1, 1972, and designating jurisdictions such as Italy and the Respondent's location, China; and International Trademark Registration number 732339 for BOUYGUES CONSTRUCTION, registered on April 13, 2000, and designating jurisdictions such as Germany and the Respondent's location, China.

The disputed domain name was registered on October 7, 2022, and is therefore of a later date than the registration of the abovementioned trademarks of the Complainant. The Complainant submits evidence that the disputed domain name directed to a website displaying links to an online casino. However, the Panel notes that on the date of this decision, the disputed domain name directs to an inactive webpage.

5. Parties' Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for BOUYGUES and BOUYGUES CONSTRUCTION, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are distinctive and well-known, and submits company and marketing information as well as a number of prior decisions from UDRP panels which have explicitly recognized the Complainant's rights in its trademarks for BOUYGUES and BOUYGUES CONSTRUCTION and have recognized that such trademarks are well-known, see for instance *Bouygues v. Rapp Catherine*, WIPO Case No. [D2021-0778](#) and *Bouygues S.A. v. Rafael Vivier*, WIPO Case No. [D2019-1401](#). The Complainant particularly contends that the Respondent is using the disputed domain name to redirect Internet users to a gambling website, that the Respondent is in no way connected to or licensed by the Complainant, that there are no justifications for the use of its trademarks in the disputed domain name, and that the Respondent's abusive use of the disputed domain name does not confer any rights or legitimate interests on it, and constitutes registration and use in bad faith.

The Complainant requests that the disputed domain name be transferred to it.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of the proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requested that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

The Panel has carefully considered all elements of this case, and considers the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited to present a response and arguments in either English or Chinese and that all the communications sent from the Center to the Respondent were in both Chinese and English); the fact that the disputed domain name contains the Complainant's trademark in its entirety and that the disputed domain name is written in Latin letters and not in Chinese characters; and the fact that Chinese as the language of proceedings could lead to unwarranted delays and costs for the Complainant.

In view of all these elements, the Panel concludes that the language of proceedings shall be English.

6.2. Discussion and Findings on the merits

The Policy requires the Complainant to prove three elements:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The Panel finds that the Complainant has shown that it has valid rights in the marks BOUYGUES and BOUYGUES CONSTRUCTION based on its intensive use and longstanding registration of the same as trademarks.

As to confusing similarity of the disputed domain name with the Complainant's marks, the Panel considers that the disputed domain name consists of the combination of two elements, namely the terms "in-pulse", combined with the Complainant's BOUYGUES CONSTRUCTION trademark, each connected by hyphens. The applicable generic Top-Level Domain ("gTLD") (".com" in this case) is viewed as a standard registration requirement, and may as such be disregarded by the Panel, see in this regard the WIPO Overview of WIPO

Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1. The Panel finds that the hyphen may also be disregarded as it is considered merely a punctuation mark (see also *Accor and SoLuxury HMC v. YinSi BaoHu Yi KaiQi (Hidden by Whois Privacy Protection Service) / Lin Qing Feng*, WIPO Case No. [D2016-1262](#)).

Furthermore, according to the [WIPO Overview 3.0](#), section 1.7, “in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing” (see also *Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). The Panel concludes that the disputed domain name contains the entirety of the Complainant’s trademarks for BOUYGUES and BOUYGUES CONSTRUCTION, which remain easily recognizable in the disputed domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly to the Complainant’s registered trademark, and that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel holds that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee, or distributor of the Complainant, is not a *bona fide* provider of goods or services under the disputed domain name and is not making a legitimate noncommercial or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Upon review of the facts and evidence provided by the Complainant, the Panel notes that the disputed domain name directed to a website redirecting Internet users to a website displaying links to an online casino, which shows the intention on the part of the Respondent to take unfair advantage of the Complainant’s trademarks to obtain undue commercial gains. However, the Panel notes that on the date of this decision, the disputed domain name directs to an inactive webpage. In this regard, the Panel finds that holding a domain name passively, without making any use of it, also does not confer any rights or legitimate interests in the disputed domain name on the Respondent in these circumstances (see in this regard earlier UDRP decisions such as *Bollere SE v. 赵竹飞 (Zhao Zhu Fei)*, WIPO Case No. [D2020-0691](#) and *Vente-Privee.Com and Vente-Privee.com IP S.à.r.l. v. 崔郡 (jun cui)*, WIPO Case No. [D2021-1685](#)).

On the basis of the foregoing, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the registration of the disputed domain name was clearly intended to take unfair advantage of the Complainant’s well-known trademarks for BOUYGUES and BOUYGUES CONSTRUCTION, by using such marks in their entirety in the disputed domain name to mislead and divert consumers to the website at the disputed domain name. Given the distinctiveness and well-established fame of the Complainant’s trademark, the Panel finds that the registration of the disputed domain name clearly targeted such well-known trademarks, and that the Respondent knew, or at least should have known, of the existence of the Complainant’s well-known marks. Moreover, even a cursory Internet search at the time of registration of the disputed domain name would have made it clear to the Respondent that the Complainant owned registered trademarks in BOUYGUES and BOUYGUES CONSTRUCTION and used these extensively. In the Panel’s view, the preceding elements establish the bad faith of the Respondent in registering the disputed domain name.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name redirected Internet users to a website displaying links to an online casino. The Panel accepts that this showed the intention on the part of the Respondent to obtain undue commercial gains from using the Complainant's well-known BOUYGUES and BOUYGUES CONSTRUCTION trademarks in the disputed domain name, and thereby also tarnishes the Complainant's trademarks (see also prior UDRP cases accepting tarnishment from use of well-known trademarks to direct Internet users to a website offering gambling services *Sodexo v. Li Li*, WIPO Case No. [D2015-1018](#)). Furthermore, on the date of this decision, the disputed domain name links to an inactive website. In this regard, the [WIPO Overview 3.0](#), section 3.3 provides: "From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding". The Panel has reviewed all elements of this case, and attributes particular relevance to the fact that the disputed domain name contains the entirety of the Complainant's trademark, to the high degree of distinctiveness and well-established fame of the Complainant's trademarks, and finally, the unlikelihood of any good faith use to which the disputed domain name may be put by the Respondent. In these circumstances, the Panel considers that the passive holding of the disputed domain name by the Respondent constitutes use of the disputed domain name in bad faith. On the basis of the foregoing elements, the Panel finds that it has been demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third element under the Policy.

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 <in-pulse-bouygues-construction.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: December 12, 2022