

ADMINISTRATIVE PANEL DECISION

Bouygues v. Jean DEWEINE

Case No. D2023-1447

1. The Parties

The Complainant is Bouygues, France, represented by ADVANT Altana, France.

The Respondent is Jean DEWEINE, France.

2. The Domain Name and Registrar

The disputed domain name <bouygues-groups.com> is registered with Register SPA (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 4, 2023. On April 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 2023, 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 (Redacted for Privacy), and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 2023 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 amendment to the Complaint on April 19, 2023.

The Center verified that the Complaint together with the amendment to the 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 April 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 26, 2023.

The Center appointed Benjamin Fontaine as the sole panelist in this matter on June 6, 2023. 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 in this case is Bouygues SA, a major French industrial group with activities in France and in over 80 countries. The Complainant operates in particular in the fields of construction, energy, telecommunication and media.

The Complainant claims numerous trade mark rights and domain names as a basis for its case. As France is the key territory here, in view of the Respondent's alleged location, it is sufficient to mention here the French trade mark BOUYGUES (word) No. 92408370, applied on March 3, 1992, and registered July 23, 1993. The Complainant also owns numerous BOUYGUES formative domain names, including <bouyguesgroupe.com>, <bouyguesgroup.com>, and <bouyguesgroupe.fr>.

The disputed domain name was registered on September 3, 2022. The identity of the Respondent, an individual with a non-existing address, was disclosed by the Registrar in the course of this proceeding.

As evidenced by the Complainant, the disputed domain name was used to create emails impersonating the Complainant and one of its employees. The emails were allegedly signed by a purchasing director, and some of them included the logo associated to the Complainant's house mark, and a reference to its corporate website. These emails were sent to a number of potential business partners of the Complainant.

5. Parties' Contentions

A. Complainant

The arguments of the Complainant can be summarized as follows:

On the first element of the Policy, the Complainant indicates that the disputed domain name wholly incorporates the Complainant's trade mark BOUYGUES. Also, this word is placed in first position and will be directly perceived by the consumers. The additional element "groups" is used commonly in trade. For these reasons, the Complainant claims that the disputed domain name is confusingly similar to the Complainant's trade marks.

On the second element of the Policy, the Complainant argues that the Respondent has no rights or legitimates interests in respect of the disputed domain name. The Complainant states that the Respondent has no intellectual property rights over the name Bouygues, and has not been authorized by the Complainant to incorporate its trade mark in the disputed domain name. Also, the disputed domain name is not subject to a *bona fide* use: indeed, it is used for a phishing scam. At least four different companies were targeted by the Respondent, between November 2022 and February 2023 with emails sent on behalf of a former Chief technical officer of the Complainant.

On the third element of the Policy, the Complainant claims that the disputed domain name was both registered and used in bad faith. On the bad faith registration, the Respondent is said to have been fully aware of the existence of the Complainant, which exists since 1972. Besides, the trade marks BOUYGUES are distinctive and well-known. Also, any search online would have revealed to the Respondent the existence and scope of the rights of the Complainant over BOUYGUES. On the bad faith use, the Complainant highlights that it did not authorize the registration of the disputed domain name, which has been used to send fraudulent emails: "these emails use the real name of an individual who is an employee of Bouygues, in order to give a warranty as to its origin and to reinforce the appearance of credibility to this fraud attempt." The Complainant highlights additional factors of confusion such as the reference in the emails to its corporate website and the reproduction of its logo.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove all of the following three elements in order to be successful in these proceedings:

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

A. Identical or Confusingly Similar

The Complainant, under the first requirement of paragraph 4(a) of the Policy, needs to establish that the disputed domain name is identical or confusingly similar to a trade mark or a service mark in which it has rights. The first criterion is perceived primarily as a standing requirement for the Complainant.

The Complainant has shown that it holds rights over the trade mark BOUYGUES. This trade mark is fully reproduced in the disputed domain name <bouygues-groups.com>. The addition of the element “groups” does not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

Hence, the first element set out in paragraph 4(a) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances that may indicate the Respondent’s rights or legitimate interests in the disputed domain name. These circumstances are:

- (i) before any notice of the dispute, the Respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent (as individual, business, or other organization) has been commonly known by the disputed domain name, in spite of not having acquired trade mark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in the disputed domain name. This entitles the Panel to draw any inferences from such default, as it considers appropriate, pursuant to paragraph 14(b) of the Rules. Nevertheless, the burden of proof is still on the Complainant to make at least a *prima facie* case against the Respondent under the second UDRP element.

In that sense, and according to the evidence submitted, the Complainant has made a *prime facie* case against the Respondent which has not been commonly known by the disputed domain name and is not affiliated with the Complainant nor has it been licensed or otherwise permitted to use any of the Complainant’s trade marks or to register a domain name incorporating any of those trade marks.

Besides, the disputed domain name is not used in connection with a *bona fide* offering of goods or services. On the contrary, the operation by the Respondent of a phishing scheme impersonating the Complainant demonstrates a lack of rights or legitimate interests.

Moreover, the nature of the disputed domain name, comprising the Complainant's trademark in its entirety with the element "-groups", carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1. The Panel further notes that the use of the disputed domain name to send impersonating emails affirms such risk.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In order to prevail under the third element of paragraph 4(a)(iii) of the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith.

Paragraph 4(b) of the Policy lists a number of circumstances which, without limitation, are deemed to be evidence of the registration and use of a domain name in bad faith. These are:

- (i) circumstances indicating that [a respondent has] registered or acquired a disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the complainant or to a competitor of the complainant, for valuable consideration in excess of [the respondent's] documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) [the respondent has] registered the disputed domain name in order to prevent the complainant from reflecting the complainant's trade mark or service 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 disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the disputed domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 Respondent has acted in bad faith, when registering and using the disputed domain name.

First, the Respondent had necessarily the Complainant's trade mark in mind when it registered the disputed domain name. The Panel considers that the association of the well-known trade mark BOUYGUES with the element "-groups" confirms the Respondent's awareness of the Complainant, which is one of the major groups based in France, where the Respondent is allegedly located. Also, the Respondent has acted in bad faith by providing false contact details.

Second, the Respondent has operated a phishing scheme to the detriment of the Complainant and of the companies with which it established contacts. The use of a misleading email address, to impersonate an employee of the Complainant, is meant to attract potential business partners for the commercial gain of the Respondent and denotes the Respondent's bad faith. See [WIPO Overview 3.0](#), section 3.4

Accordingly, the third criteria set out in paragraph 4(a) of the Policy is also satisfied.

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-groups.com> be transferred to the Complainant.

/Benjamin Fontaine/

Benjamin Fontaine

Sole Panelist

Date: June 19, 2023