

ADMINISTRATIVE PANEL DECISION

BOUYGUES v. Christian Gobert

Case No. D2024-2008

1. The Parties

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

The Respondent is Christian Gobert, France.

2. The Domain Name and Registrar

The disputed domain name <bouygues-constructions-uk.com> is registered with IONOS SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 15, 2024. On May 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 17, 2024, 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 (Unknown, Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same date 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 the same date.

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 May 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 18, 2024.

The Center appointed Marie-Emmanuelle Haas as the sole panelist in this matter on June 28, 2024. 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, its businesses are centered on four sectors of activity: Construction, Energy and Services,, Media, and Telecommunications.

It is operating in over 80 countries and the Complainant's sales amounted to 56 billion euros in 2023.

Its subsidiary Bouygues Construction is a world player in the fields of building, public works, energy, and services.

As a global player in construction and services, its subsidiary Bouygues Construction designs, builds and operates buildings and structures which improve the quality of people's living and working environment: public and private buildings, transport infrastructures and energy and communications networks.

The Complainant is the owner of several BOUYGUES CONSTRUCTION trademarks, such as the International Trademark BOUYGUES CONSTRUCTION n° 732339 registered in class 37 on April 13, 2000, and duly renewed.

The Complainant relies as well on the domain name <bouygues-construction.com> registered on May 10, 1999, in the name of its subsidiary Bouygues Construction.

The disputed domain name was registered on April 13, 2024, and resolves to the landing page of its Registrar.

An MX record has been set up on the disputed domain name.

The Respondent is apparently an individual domiciled in France.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that the disputed domain name is confusingly similar to its trademark BOUYGUES CONSTRUCTION, which is included in its entirety in the disputed domain name.

The addition of the letter "s" and the geographical term "UK" for "United Kingdom" is not sufficient to avoid the likelihood of confusion.

It is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP".

Thus, the disputed domain name is confusingly similar to the Complainant's trademark BOUYGUES CONSTRUCTION.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that he is not related in any way to the Complainant's business. The Complainant contends that the Respondent is not affiliated with the Complainant nor authorized by it in any way to use the Complainant's trademarks. The Complainant does not carry out any activity for, nor has any business with the Respondent. Moreover, the disputed domain name resolves to a parking page. The Complainant contends that the Respondent did not use the disputed domain name, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name.

Thus, the Complainant contends that it has made a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Given the distinctiveness and the reputation of the Complainant's BOUYGUES CONSTRUCTION trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's rights on the BOUYGUES CONSTRUCTION trademark.

The Complainant asserts that the disputed domain name resolves to a parking page, that the Respondent has not demonstrated any activity in respect of the disputed domain name, and that it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

Finally, the disputed domain name has been set up with MX records, what suggests that it may be actively used for email purposes.

It is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an email address.

On these basis, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Although the addition of other terms here, an "s" to the word "construction" and the two letters suffix "uk" which designates the United Kingdom, the Panel finds the addition of such letter and suffix does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it 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 has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Complainant asserts that the Respondent is not related in any way with the Complainant and that it did not grant neither license nor authorization to use the BOUYGUES CONSTRUCTION trademark or to register the disputed domain name. This allegation was not contested by the Respondent.

There is no indication that the Respondent is commonly known by the BOUYGUES CONSTRUCTION trademark or under the disputed domain name.

There is no evidence of any bona fide use of the disputed domain name as the disputed domain name is currently resolving to the landing page of the Registrar, explaining that it registered the disputed domain name and advertising/promoting its own services on this same landing page.

The Respondent did not respond to the Complainant to rebut its prima facie case. It did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

The composition of the disputed domain name carries a risk of implied affiliation with the Complainant, and, as such, prevents a finding of rights or legitimate interests on behalf of the Respondent. [WIPO Overview 3.0](#), section 2.5.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of the disputed domain name.

It provides that:

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered, or the respondent has 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 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 your 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.

In the present case, the Panel notes that the Respondent, who is domiciled in France, could not have ignored the BOUYGUES CONSTRUCTION well known trademark when it registered the disputed domain name, which amounts to registration in bad faith. [WIPO Overview 3.0](#), section 3.2.2.

The disputed domain name resolves to the landing page of the Registrar.

The current non-use of the disputed domain name does not prevent a finding of bad faith use.

Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the Respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. In this case, the Panel notes the distinctiveness and the reputation of the Complainant's trademark, the Respondent's concealment of its identity, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Lastly, setting up an MX record on the disputed domain name proves that the Respondent intended to use it to send emails using, without any authorization, the Complainant's trademark. The Panel considers that the disputed domain name may be used for phishing or other fraudulent purposes, which also supports a finding of bad faith.

The Panel finds that the Complainant has established the third element of 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 <bouygues-constructions-uk.com> be transferred to the Complainant.

/Marie-Emmanuelle Haas/

Marie-Emmanuelle Haas

Sole Panelist

Date: July 12, 2024