

## **ADMINISTRATIVE PANEL DECISION**

### **BOUYGUES v. CRP-Bouygues- Construction-EnvoiFact Case No. D2024-3372**

#### **1. The Parties**

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

The Respondent is CRP-Bouygues- Construction-EnvoiFact, United States of America (“United States”).

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

The disputed domain name <bouygues-construction.com> is registered with Squarespace Domains II LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 16, 2024. On August 19, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 19, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 22, 2024 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 August 22, 2024.

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 August 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 19, 2024.

The Respondent did not submit any response. Accordingly, the Center notified the Commencement of Panel Appointment Process on September 24, 2024.

The Center appointed Zoltán Takács as the sole panelist in this matter on September 30, 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**

Founded in 1952 and headquartered in Paris, France the Complainant is a diversified group of companies active in constructions, energy and services, medias and telecoms. Operating in over 80 countries the Complainant's sales amounted to EUR 56 billion in 2023.

Bouygues Construction is a wholly-owned subsidiary of the Complainant and one of France's leading construction companies with presence in 60 countries, designing, building and operating buildings and structures.

The Complainant is owner of the International Trademark Registration No. 732339 for the word mark BOUYGUES CONSTRUCTION registered since April 13, 2000.

Bouygues Construction's main website is available at "www.bouyges-construction.com" with the corresponding domain name <bouyges-construction.com> being registered since May 10, 1999.

The disputed domain name that has active Mail Exchange ("MX") records was registered on August 15, 2024 and has been resolving to a webpage under construction.

#### **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.

Notably, the Complainant contends that:

- the disputed domain name which is an obvious misspelling of the Complainant's trademark (with addition of a letter "s") is confusingly similar to the trademark;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name since it is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy;
- the Respondent's misspelling of the Complainant's mark and the fact the disputed domain name has been set up with MX records, suggesting that it may be actively used for sending and receiving emails are evidence of bad faith registration and use of the disputed domain name.

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

##### **B. Respondent**

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

However, on September 4, 2024 a third party contacted the Center via email stating that: (i) he received the notification of the Complaint via mail the Center sent to the address confirmed by the Registrar; (ii) the physical address for the disputed domain name is fraudulent; (iii) he does not own the disputed domain

name nor has ever sought to acquire it, and (iv) the phone number and the email address for the disputed domain name confirmed by the Registrar do not belong to him.

Based on the above statement of an unknown third party and lack of any response to the Complaint the Panel is not in a position to make any determination as to the identity of the true registrant of the disputed domain name. However, the Panel notes that it appears that the true registrant of the disputed domain name is an unknown third party that fraudulently registered the disputed domain name by using false or fictitious information and therefore all references to Respondent herein are meant for the true, in this case unknown registrant of the disputed domain name.

## **6. Discussion and Findings**

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that:

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

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

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.

The Complainant's trademark is recognizable within the disputed domain name with addition of a letter "s" to the mark in the disputed domain name. The Panel considers this obvious misspelling of the Complainant's trademark in the disputed domain name a clear-cut example of typosquatting.

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by UDRP panels to be confusingly similar to the relevant mark for the purpose of the first element. [WIPO Overview 3.0](#), section 1.9.

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

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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.

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 Respondent is not affiliated with the Complainant in any way and has never been authorized by the Complainant to register and use any domain name incorporating BOUYGUES CONSTRUCTION trademark.

Given that the disputed domain name is a classic example of typosquatting registration whereby the Respondent has intentionally sought to create confusion for Internet users unaware of the one-letter difference between the disputed domain name and the Complainant's trademark, the Respondent's use of the disputed domain name does not qualify as a bona fide offering of goods or services.

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

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

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the disputed domain name is a typo-variant of the Complainant's BOUYGUES CONSTRUCTION trademark, and a clear-cut case of typosquatting registration (see e.g. *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)).

In view of the Panel, the fact that the Respondent chose a misspelled variant of the Complainant's trademark at construction of the disputed domain name indicates that the Respondent must have been aware of the Complainant's business and trademark at the time of obtaining the disputed domain name and chose to register it to target the Complainant's mark. [WIPO Overview 3.0](#), section 3.2.1.

As mentioned above the disputed domain name has been used only to direct Internet users to a webpage under construction.

As mentioned above, it appears that the Respondent purposefully used false or fictitious information at registration of the disputed domain name which the Panel notes to be a further indication supporting the finding of bad faith. [WIPO Overview 3.0](#), section 3.3.

Furthermore, in these circumstances, the Respondent's active MX records associated with the disputed domain name - enabling sending potential fraudulent emails - creates a real and ongoing threat to the Complainant.

The fact that the disputed domain name has not been actively used does not prevent a finding of bad faith under the doctrine of passive holding. In this context the Panel notes that the true registrant has concealed its identity and used false or fictitious details at registration of the disputed domain name. In addition, it is implausible to contemplate of any good faith use to which the disputed domain name may be put by the Respondent. [WIPO Overview 3.0](#), section 3.3.

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-construction.com> be transferred to the Complainant.

*/Zoltán Takács/*

**Zoltán Takács**

Sole Panelist

Date: October 11, 2024