

ADMINISTRATIVE PANEL DECISION

BOUYGUES v. Toolz Hush, hushbar
Case No. D2024-3373

1. The Parties

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

The Respondent is Toolz Hush, hushbar, United States of America.

2. The Domain Name and Registrar

The disputed domain name <bouygues-construction.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 16, 2024. On August 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 20, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 September 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 25, 2024.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on October 3, 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 is Bouygues S.A., founded in 1952 and it is related to construction, energy services, and telecommunication services. Its subsidiary Bouygues Construction's main activities are related to building, public works, and energy services.

The Complainant owns trademarks rights concerning the trademark BOUYGUES CONSTRUCTION, including International Trademark Registration No. 732339, registered on April 13, 2000.

The Complainant also owns the domain <bouyguesconstruction.com>, registered on May 10, 1999.

The Respondent is Toolz Hush, hushbar, from the United States of America.

The disputed domain name <bouygues-construction.com> was registered on August 13, 2024, and resolves to an inactive website.

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 argues that the disputed domain name is identical to the trademarks BOUYGUES and BOUYGUES CONSTRUCTION.

According to the Complainant, the disputed domain name is a typosquatted version of the trademark BOUYGUES CONSTRUCTION.

There is no evidence that the Respondent has made demonstrable preparations to use the disputed domain name for legitimate purposes, nor is there any evidence that the Respondent is using the disputed domain name in connection with any commercial or fair use.

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. That being the case, the Complainant finds that the disputed domain name is used to mislead its potential clients.

The Complainant states that it has prior rights over the trademarks BOUYGUES and BOUYGUES CONSTRUCTION and has not authorized the registration and use of the disputed domain name.

The Complainant's intellectual property rights for BOUYGUES and BOUYGUES CONSTRUCTION trademarks predate the registration of the disputed domain name.

According to the Complainant, the registration of the disputed domain name was conducted in bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to the 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.

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 the trademark BOUYGUES CONSTRUCTION for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), sections 1.7 and 1.9.

The disputed domain name can be considered a typosquatting of the Complainant's trademark, with the sole difference being the substitution of the "n" to "m".

The Panel finds 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 that the Complainant has established 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.

There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or that before any notice of the dispute the Respondent has made 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.

The Panel finds 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 finds more likely than not that the Respondent was aware of the Complainant's trademark registrations and domain name, since they predate the registration date of the disputed domain name.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Furthermore, the misspelling of the trademark BOUYGUES CONSTRUCTION seems to be intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith.

Panels have found that the non-use of a domain would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Taking into account the distinctiveness of the Complainant's trademark, the composition of the disputed domain name, and the lack of response by the Respondent, the Panel 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.

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

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

/Mario Soerensen Garcia/

Mario Soerensen Garcia

Sole Panelist

Date: October 17, 2024