

ADMINISTRATIVE PANEL DECISION

Bouygues v. Kelvin Wilk, Sill
Case No. D2024-3678

1. The Parties

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

The Respondent is Kelvin Wilk, Sill, France.

2. The Domain Name and Registrar

The disputed domain name <bouygves-construction.com> is registered with Squarespace Domains LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 11, 2024. On September 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 11, 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, Sill) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 12, 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 September 12, 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 September 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 6, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 14, 2024.

The Center appointed William Lobelson as the sole panelist in this matter on October 18, 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 SA, a French group of companies dedicated inter alia to construction.

It owns the following trademark registration:

- International Trademark registration No. 732339 for BOUYGUES CONSTRUCTION, registered on April 13, 2000.

The Complainant owns the domain name <bouygues-construction.com>, registered on May 10, 1999.

The disputed domain name <bouygves-construction.com> was registered on September 10, 2024. It resolves to a website under construction and Mail Exchange ("MX") servers are set up.

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 is confusingly similar to its earlier trademark, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being passively used 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

Notwithstanding the default of the Respondent, it remains incumbent on the Complainant to make out its case in all respects under the Rules set out in paragraph 4(a) of the Policy.

Namely, the Complainant must prove that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (paragraph 4(a)(i));
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name (paragraph 4(a)(ii));
- (iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

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 Panel finds the mark is recognizable within the disputed domain name, despite the misspelling of the Complainant's mark ("bouygves" instead of "bouygues"). That does not prevent a finding of confusing similarity under the first element; see section 1.9 of the WIPO Overview: A domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name.

Accordingly, the disputed domain name is confusingly similar with the mark for the purposes of the Policy.

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.

The Complainant has made a prima facie showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Complainant further contends that the Respondent is not commonly known under the disputed domain name and does not make any bona fide or legitimate noncommercial use of the same.

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

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 Complainant claims that the Respondent has registered the disputed domain name and has used it in bad faith, even though the disputed domain name does not resolve towards any active web page.

It is a consensus view among UDRP panels that, although the circumstances set out in paragraph 4(b) of the UDRP would establish bad faith registration and use, the apparent lack of so-called active use (e.g., not resolving to a website) of the domain name constituting passive holding does not prevent a finding of bad faith. The Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith.

Examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having a well-known trademark, no response to the Complaint having been filed, and the Respondent's concealment of its identity. UDRP panels may draw inferences about whether a domain name has been used in bad faith given the circumstances surrounding its registration.

The Complainant has substantiated the fact that its trademark BOUYGUES, which has been registered and used in France for years, now benefit from a high level of public awareness. Earlier decisions have acknowledged the Complainant's trademark's reputation.

Further the disputed domain name was registered by the Respondent, according to the information disclosed by the Registrar, an individual that is based in France. The fact that the Respondent used an address in France implies that he is located in France, where the Complainant's mark is very well known.

In light of the above, this Panel finds hard to believe that the Respondent did not have the Complainant's trademark in mind when it registered the disputed domain name.

Regarding the high similarity of the disputed domain name with the trademark BOUYGUES CONSTRUCTION, it seems unlikely that the disputed domain name could have been registered and then used in good faith.

The Panel also notes that the Respondent did not reply to the Complaint.

The Panel infers from the above that the Respondent acted in bad faith when it registered the disputed domain name, and still acts in bad faith.

The disputed domain name is not directed to any active web pages.

As stated in [WIPO Overview 3.0](#), section 3.3, there is a consensus view about "passive holding":

"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. While 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

Such passive holding is to be regarded as use in bad faith (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Jupiters Limited v. Aaron Hall*, WIPO Case No. [D2000-0574](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#); *Westdev Limited v. Private Data*, WIPO Case No. [D2007-1903](#); *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#); *Intel Corporation v. The Pentium Group*, WIPO Case No. [D2009-0273](#)).

In the decision of *Confédération Nationale du Crédit Mutuel v. Nicola Bazar*, WIPO Case No. [D2013-1572](#), the panel states as below:

“Respondent knew or should have known that the Domain Name included Complainant’s CREDIT MUTUEL well-known trademark [...] However, passive holding of the website does not prevent the Panel from finding registration and use in bad faith. The Panel further notes that Respondent undeveloped use of the website at the Domain Name which incorporates Complainant’s trademark in its entirety indicates that Respondent possibly registered the Domain Name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a service on its website or location, as per paragraph 4(b)(iv) of the Policy.”

Further, the Complainant has filed evidence showing that the Respondent had set up MX servers in relation with the disputed domain name, thus revealing a possible intention to use the same as an email address.

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 <bouygves-construction.com> be transferred to the Complainant.

/William Lobelson/

William Lobelson

Sole Panelist

Date: October 23, 2024