

ADMINISTRATIVE PANEL DECISION

Bouygues v. Whois Privacy, Whois Privacy (enumDNS dba) / Eolia Wirtz
Case No. D2022-3411

1. The Parties

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

The Respondent is Whois Privacy, Whois Privacy (enumDNS dba), Luxembourg / Eolia Wirtz, France.

2. The Domain Name and Registrar

The disputed domain name <bouygues-batiments-ile-des-france.com> is registered with EuroDNS S.A. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 14, 2022. On September 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 15, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 15, 2022, 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 15, 2022.

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 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 11, 2022.

The Center appointed William Lobelson as the sole panelist in this matter on October 19, 2022. 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, a French group of industrial companies devoted to construction, with its subsidiary Bouygues Construction.

The Complainant is the owner of several trademarks BOUYGUES BATIMENT, *inter alia*:

- International trademark BOUYGUES BATIMENT no. 723515 of Nov 22, 1999
- European Trade Mark BOUYGUES BATIMENT no. 001217223 of June 23, 1999

The Complainant also owns and uses the domain names <bouygues-batiment.com> and <bouygues-batiment-ile-de-france.com>

The disputed domain name was registered on September 10, 2022, and resolves to a parking page with commercial links dedicated to building construction and renovation.

5. Parties' Contentions

A. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its earlier trademarks, 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 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)); and

(iii) the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii)).

A. Identical or Confusingly Similar

The Complainant is the owner of trademark registrations for BOUYGUES BATIMENT, registered and used in relation with construction services.

The disputed domain name <bouygues-batiments-ile-des-france.com> reproduces the Complainant's trademark BOUYGUES BATIMENT, adding a hyphen between the two elements of the Complainant's trademark.

Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise), in this case, the geographical designation "ile-des-france" would not prevent a finding of confusing similarity under the first element; see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The use of the plural form in the disputed domain name in respect of the terms "batiments" and "ile des france" (the latter being grammatically incorrect), the addition of a hyphen, and the generic Top-Level Domain ("gTLD") ".com" do not either prevent a finding of confusing similarity.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under UDRP, paragraph 4(c) include the following:

- (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 and services;
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark 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 trademark or service mark at issue.

The Panel notes that the Respondent has not filed a response and thus did not deny the Complainant's assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

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 known under the disputed domain name, does not own any proprietary rights in the name "bouygues batiments ile des france", and does not make any *prima facie* use – neither commercial nor noncommercial, of the same, being emphasized that the disputed domain name does not resolve towards a web page with substantive content. It only routes to a parking page of sponsored links, related to constructions services, but which does not reflect any active commercial use of the name "bouygues batiments ile des france" by the Respondent.

The Respondent has not replied to the Complainant's contentions, and has not rebutted the Complainant's *prima facie* case.

The Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant has substantiated the fact that its trademark, which has been registered and used for years, now benefits from a high level of public's awareness, particularly in France.

When the identity of the Respondent was disclosed by the Registrar, it was found that the said Respondent had declared a place of residence in France. Due to the longstanding and use of the Complainant's mark in France, the Respondent could not reasonably be unaware of the Complainant's rights when it registered the disputed domain name.

The Complainant has also demonstrated that the Complainant is making use of a domain name <bouygues-batiment-ile-de-france.com>, which a mere Google search easily reveals.

It is more troubling to observe that the Respondent adopted a domain name that is almost identical to a domain name that the Complainant is making use of, the differences residing in a misspelling of the same. From the standpoint of Internet users seeking or expecting the Complainant, the disputed domain name shall be considered as being owned by – or being registered with the consent of the Complainant.

The Panel infers from the above that the Respondent had the Complainant's trademarks in mind when it registered the disputed domain name, and engaged in a bad faith conduct of typosquatting, in all likelihood with the intent of causing confusion among Internet users and diverting to its profit the Complainant's customers.

The Complainant has also substantiated that the disputed domain name is used to resolve to a pay-per-click page, where sponsored links are being parked. All those links direct to third parties web pages relating to services in the field of construction.

The Complainant runs a business in that very field, and its earlier trademark is registered in relation with such constructions services.

The Respondent is therefore making use of the Complainant's marks in relation with services that are identical to those in respect of which the said mark is used and protected.

Besides, it has been decided in earlier UDRP decisions that a respondent that uses a domain name with automatically generated pay-per-click links cannot disclaim responsibility, and such content would be sufficient to conclude to a finding of bad faith, as reported in [WIPO Overview 3.0](#), section 3.5 and, e.g., in a previous case:

Credit Industriel et Commercial S.A. v. IT Administrator, WIPO Case No. [D2013-0707](#): “In addition to the above, the use given to the website, as a parking page which offers links to websites related to finance, banking, credit and insurance services, of the Complainant's direct competitors is sufficient evidence to conclude that the Respondent was in all likelihood well aware of the Complainant's trade mark and wanted to refer to the Complainant by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website”.

Therefore, in accordance with paragraph 4 (b)(iii) of the Policy, the above findings lead to the conclusion that the disputed domain name has been registered and used in bad faith.

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-batiments-ile-des-france.com> be transferred to the Complainant.

/William Lobelson/

William Lobelson

Sole Panelist

Date: November 2, 2022