

ADMINISTRATIVE PANEL DECISION

Bouygues v. Air World, Air World SAS
Case No. D2022-4815

1. The Parties

The Complainant is Bouygues, France, represented by Cabinet Regimbeau, France.

The Respondent is Air World, Air World SAS, France.

2. The Domain Name and Registrar

The disputed domain name <bouygues.family> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 15, 2022. On December 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 16, 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 (Domains by Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 19, 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 December 22, 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 January 4, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 24, 2023. The Response was filed with the Center on January 23, 2023.

The Center appointed Louis-Bernard Buchman as the sole panelist in this matter on February 3, 2023. 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 a French conglomerate active in the construction, telecoms, and media sectors, and its shares are listed on the Paris stock exchange. It was founded by Mr. Francis Bouygues in 1952, and his son, Martin Bouygues, took over the management of the company in 1989. Martin Bouygues together with his brother Olivier Bouygues currently own 27.03 percent of the company's stock. The Complainant operates in 80 countries, has about 200,000 employees worldwide, and its turnover was EUR 37.6 billion in 2021. In 2022, it further diversified in the energy and related services sector by acquiring Equans.

The Complainant owns a large portfolio of trademark registrations containing the term BOUYGUES, including French Trademark BOUYGUES No. 1197243, registered on May 4, 1972, and International Trademark BOUYGUES No. 949188, registered on September 27, 2007 (together hereinafter referred to as: the "Mark").

The Complainant is since 1997 the owner of numerous domain names incorporating the Mark, such as <bouygues.com>.

The disputed domain name does redirects to an active ecommerce website at the domain name <boom.market> at the time of this decision, and according to evidence submitted by the Complainant, it used to resolve to a parking page displaying pay-per-click links, including to some of the Complainant's direct competitors.

The disputed domain name was created on May 29, 2022.

5. Parties' Contentions

A. Complainant

- (i) The Complainant submits that the disputed domain name reproduces the Mark, in which the Complainant has rights, and is identical and confusingly similar to the Mark insofar as the disputed domain name contains the Mark in its entirety. The Complainant also submits that the generic Top-Level Domain ("gTLD") ".family" cannot serve to distinguish the disputed domain name from the Mark.
- (ii) The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Furthermore, the Complainant contends that it never licensed the Respondent to use the Mark in any manner, or consented to such use. The Complainant also asserts that the Respondent never had any business connection or affiliation with the Complainant.
- (iii) The Complainant submits that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant contends that the Respondent knew about the Mark when registering the disputed domain name, alleges that the Respondent opportunistically chose to register it for commercial gain and contends that the Respondent's passive holding of the disputed domain name constitutes bad faith use.
- (iv) The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

- (i) The Respondent asserts that the disputed domain name is noncommercial as the gTLD “.family” implies a noncommercial use.
- (ii) The Respondent alleges that he offered to auction off for charity the disputed domain name and received no bid from the Complainant.
- (iii) The Respondent contends that other persons than the Complainant are in France named “Bouygues”, gives two such examples, and infers therefrom that the term cannot be appropriated by the Complainant.
- (iv) The Respondent requests that the Complaint be dismissed.

6. Discussion and Findings

6.1. Procedural Aspects

The Respondent was sent a copy of the complaint containing on its cover page a link to a model response.

The Panel notes that the Center received on January 23, 2023 an email from Peter Alfred-Adekeye via an email address different from the email address identified by the concerned Registrar as associated with the registrant of record of the disputed domain name (*i.e.*, the Respondent Air World, Air World SAS), stating that:

- “1. As the TLD implies, .family is a non-commercial Top Level Domain and as such, it is non-commercial.
2. Thus, there is no legal basis for it to be misconstrued for a .com commercial domain intrusion.
3. Upon registering this domain, we contacted some of the name bearers to see if they’d like to purchase it via an auction for charity and the complainant was one of those contacted. He/She/They failed to respond to the outreach.
4. Instead, He/She/They chose to abuse the process and attempt to lay claim to a family name that is public and belongs to lots of people across France and the world, that are not only associated with the complainant, including but not limited to [two websites of professionals appearing to bear the surname “Bouygues”].

Accordingly, this complaint is without merit and should be dismissed accordingly.

Sincerely,
Peter
Peter Alfred-Adekeye
www.multiven.com - we maintain the software that runs the Internet™”.

Upon being requested to clarify his identity and relationship to the disputed domain name by the Center, the sender of the email replied by email on January 27, 2023:

“I confirm that I am the registrant of the domain in question and [the Registrar confirmed email address] is indeed my email address for inbound communication with spam control.
Sincerely,
Peter.”

No further communication was received from Peter Alfred-Adekeye. In the circumstances, including the explicit confirmation of registration of the disputed domain name by Peter Alfred-Adekeye and the near

identity of the email address used to submit the above-referenced communications as the email address confirmed by the concerned Registrar (using the same email service and having only a two letter difference in the identifying portion of the relevant email addresses), the Panel is prepared to accept these submissions as the Response and will consider both Air World, Air World SAS and Peter Alfred-Adekeye as the "Respondent" for purposes of this proceeding.

However, the Panel also notes the Respondent has not submitted any evidence to rebut any of the reasonable factual assertions made by the Complainant and supported by evidence provided by the Complainant.

In particular, the Respondent failed to offer the Panel any of the types of evidence set forth in paragraph 4(c) of the Policy or otherwise, from which the Panel might conclude that the Respondent has any rights or legitimate interests in the disputed domain name, such as making legitimate noncommercial or fair use of the disputed domain name.

Moreover, as discussed below, the Respondent failed to provide any exculpatory information or reasoning that might have led the Panel to question the Complainant's arguments that the Respondent has acted in bad faith.

The Panel is bound to apply Section 15(a) of the Rules, which provides that: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Section 10(a) of the Rules grants to the Panel the general power to conduct the proceeding in such manner as it considers appropriate in accordance with the Policy and the Rules, and the Panel also has the power to determine the admissibility, relevance, materiality and weight of the evidence (Section 10(d) of the Rules).

In addition, the Panel must ensure that the administrative proceeding takes place with due expedition (Section 10(c) of the Rules).

Considering the foregoing, the Panel has focused on whether the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights, whether the Respondent may have rights or legitimate interests in the disputed domain name, and whether the registration and use of the disputed domain name is in bad faith.

6.2. Requirements of paragraph 4(a) of the Policy

Under paragraph 4(a) of the Policy, it is the Complainant's burden to establish that all three of the required criteria for a transfer of the disputed domain name have been met.

A. Identical or Confusingly Similar

While ideally the Complainant would have provided evidence of the Mark's registrations themselves, from the evidence provided it is nonetheless clear that the Complainant has numerous registered trademarks for BOUYGUES (including the two registrations listed above).

In comparing the Mark with the disputed domain name, it is evident that the latter consists solely of the Mark, followed by the gTLD ".family".

It is also well established that a gTLD, including, as is the case here, the gTLD ".family", does not generally affect the assessment of a domain name for the purpose of determining identity or confusing similarity.

Therefore, what this gTLD may imply in terms of noncommercial use is simply irrelevant in determining confusing similarity.

The Panel finds that the disputed domain name is identical and confusingly similar to the Mark, which it incorporates entirely.

Thus, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although a complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that with regard to paragraph 4(a)(ii) of the Policy this could result in the often impossible task of proving a negative proposition, requiring information that is primarily if not exclusively within the knowledge of a respondent.

Thus, the consensus view of UDRP panels is that paragraph 4(c) of the Policy shifts the burden of production of evidence to the respondent to come forward with evidence of rights or legitimate interests in a domain name, once the complainant has made a *prima facie* showing, as the Panel believes the Complainant has made in this case. See *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

There is no evidence that the Respondent is commonly known by the disputed domain name or makes a legitimate noncommercial or fair use of the disputed domain name. The Respondent's argument that the ".family" gTLD of the disputed domain name would *per se* imply a noncommercial use, even if it were to be accepted, does not explain why the Respondent could claim such alleged legitimate noncommercial use, which in any event is not corroborated by any evidence.

Actually, no information is provided on what rights or legitimate interests the Respondent may have in the disputed domain name, which is offered for sale.

To counter any notion that the Respondent has such rights or legitimate interests, the Complainant has argued, without being rebutted, that the Respondent (i) has no business connection or affiliation with the Complainant, and (ii) received no license or consent from the Complainant to register or use the disputed domain name.

The fact, argued by the Respondent, that others are named "Bouygues" in France does not by itself confer rights or legitimate interests to the Respondent. In this regard, the Panel finds it telling that at the time of this Decision the disputed domain name redirects to a general e-commerce website at the domain name <boom.market>, which confirms that the disputed domain name is not currently being used in a personal name manner, and undermines the Respondent's claimed intentions. Rather, it appears more likely that the Respondent has intentionally sought to create confusion with the Complainant's Mark to draw Internet traffic to the Respondent's website for the Respondent's financial gain.

Similarly, the Respondent's argument that its legitimate interest would stem from the charitable goal he had in mind when attempting to attract bids for the purchase of the disputed domain name, in the absence of any supporting evidence, appears likely to be an ex-post fabrication and regardless would not legitimize the targeting of a well-known trademark.

In any event, the Respondent has confirmed he was aware of the Complainant and sought to sell the disputed domain name to the Complainant. It may be that the Respondent was aware of the use of "Bouygues" as a family name, but this does not necessarily mean the Respondent was not aware of, and was not targeting, the Mark. In the total circumstances of this case, including notably the large scale of the Complainant's operations (as discussed in the Factual Background) as well as the longstanding use and strong reputation of the Mark, particularly in France where the Respondent is located, the Panel is unable to find that such (unevidenced) charitable use allegation supports any claim to rights or legitimate interests on the part of the Respondent.

Moreover, taking into consideration the above circumstances, the nature of the disputed domain name, being identical to the Complainant's widely-known Mark, carries a high risk of implied affiliation. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.5.1.

In the circumstances, the Panel concludes that the Complainant has established the requirement of paragraph 4(a)(ii) of the Policy with respect to the disputed domain name.

C. Registered and Used in Bad Faith

As noted above, the Respondent has failed to provide any exculpatory information or persuasive reasoning that might have led the Panel to question the Complainant's arguments that the Respondent acted in bad faith by creating confusion to the detriment of the Complainant in registering the disputed domain name.

It is established in prior UDRP decisions that where the respondent knew or should have known of a trademark prior to registering the disputed domain name, such conduct may, in certain circumstances, support a finding of bad faith. See [WIPO Overview 3.0](#), section 3.2.2.

In this case, given the Respondent's use for commercial gain of the disputed domain name, as well as the large scale of the Complainant's operations and strong reputation of the Mark, the Panel finds that it is close to impossible that the Respondent chose to register the disputed domain name randomly with no knowledge of the Mark. See [WIPO Overview 3.0](#), section 3.1.1. In fact, the Respondent has admitted to being aware of the Complainant. In these circumstances, the Panel finds it more likely than not that the Respondent acquired the disputed domain name in consideration of the value related to the identity of the disputed domain name to the Complainant's Mark, and the fact that disputed domain name may also be a family name does not assist the Respondent.

Moreover, the disputed domain name resolved to a parking page displaying pay-per-click links, including to some of the Complainant's direct competitors, and currently resolves to a general e-commerce website, which absent any evidence to the contrary, suggests that the Respondent has sought to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Mark. See [WIPO Overview 3.0](#), section 3.1.4.

In addition, the Respondent took active steps to hide his identity. Although using a proxy or privacy service to hide the identity of the registrant is not *per se* conclusive of bad faith registration and use (see *Trinity Mirror Plc and MGN Ltd. v. Piranha Holdings*, WIPO Case No. [D2008-0004](#)), the Panel notes that the fact that the Respondent used a privacy service to hide his identity and contact details prevented the Complainant from contacting the Respondent. Prior UDRP panels have held that deliberate concealment of identity and contact information may in certain circumstances be indicative of registration in bad faith (see *TTT Moneycorp Limited v. Diverse Communications*, WIPO Case No. [D2001-0725](#), and *Schering Corporation v. Name Redacted*, WIPO Case No. [D2012-0729](#)). See section 3.2.1 of the [WIPO Overview 3.0](#).

Finally, some UDRP panels have held that in certain circumstances, registrants of domain names have a duty to abstain from registering and using a domain name which is either identical or confusingly similar to a prior trademark held by others and which would infringe upon or otherwise violate the rights of a third party. See Policy, paragraph 2(b); *Nike, Inc. v. B. B. de Boer*, WIPO Case No. [D2000-1397](#); *Nuplex Industries Limited v. Nuplex*, WIPO Case No. [D2007-0078](#); *Mobile Communication Service Inc. v. WebReg, RN*, WIPO Case No. [D2005-1304](#); *BOUYGUES v. Chengzhang, Lu Ciagao*, WIPO Case No. [D2007-1325](#); *Media General Communications, Inc. v. Rarenames, WebReg*, WIPO Case No. [D2006-0964](#); and *mVisible Technologies, Inc. v. Navigation Catalyst Systems, Inc.*, WIPO Case No. [D2007-1141](#).

The Panel concludes in the light of all these circumstances that the Respondent's registration and use of the disputed domain name constitutes bad faith, and that the requirement of paragraph 4(a)(iii) of the Policy is also satisfied in this case.

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.family>, be transferred to the Complainant.

/Louis-Bernard Buchman/

Louis-Bernard Buchman

Sole Panelist

Date: February 7, 2023