

ADMINISTRATIVE PANEL DECISION

Bouygues v. centrale photo, bouygues-centralephotovoltaïque
Case No. D2023-0757

1. The Parties

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

The Respondent is centrale photo, bouygues-centralephotovoltaïque, Israel

2. The Domain Name and Registrar

The disputed domain name <bouygues-centralephotovoltaïque.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 20, 2023. On February 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 21, 2023, 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 (Contact Privacy Inc. Customer 0165771762) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 23, 2023, 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 February 24, 2023.

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 March 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 29, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 3, 2023.

The Center appointed Alistair Payne as the sole panelist in this matter on April 21, 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, based in France, operates in the fields of building and civil works and has subsidiary activities in the fields of cellular telecom, television, and in the sectors of energy and services. It is present in over 80 countries and had over EUR 37,6 billion in revenues in 2021. It owns numerous trade mark registrations for BOUYGUES including French trade mark number 1197243, registered on March 4, 1982 and numerous domain names including <bouygues.com> from which it operates its main website and which has been registered since 1997.

The disputed domain name was registered on November 21, 2022, and gives access to a parking page which promotes and includes a link to a webpage for a website-building service called Zoho.

5. Parties' Contentions

A. Complainant

The Complainant submits that it owns registered trade mark rights for its BOUYGUES mark as noted above and that the disputed domain name wholly contains this mark and is therefore confusingly similar to it. It says that although there is a hyphen and the term "centralephotovoltaïque" in the disputed domain name after the BOUYGUES mark, this expression refers to one of the energy sectors in which the Complainant is specialized, namely photovoltaic power plants. Accordingly, this additional term does not prevent a finding of confusing similarity, says the Complainant.

The Complainant submits that the Respondent has no connection with the Complainant in any way and is not an authorised dealer, distributor or licensee of the Complainant, and has not been permitted by the Complainant to make any use of its prior rights. It notes that the trade mark BOUYGUES is highly distinctive and corresponds to the family name of the Complainant's founder and therefore there is no reason for it to be used by the Respondent and in any event the Complainant says that based on its searches no companies outside its corporate group have registered the BOUYGUES mark and there is no evidence that the Respondent is commonly known by this name, and in any event the disputed domain name resolves to a parking page which promotes and contains a link to Zoho, a company specialised in website building.

The Complainant says that the use of the disputed domain name cannot be considered as giving the Respondent rights or legitimate interests arising from "*bona fide* offer of goods or services" or a "legitimate noncommercial or fair use of the disputed domain name" and in any event such use infringes the Complainant's prior trade mark rights.

As far as bad faith is concerned, the Complainant says that the worldwide reputation attaching to the BOUYGUES mark and its pre-existing presence on the Internet indicate that, at the time of the registration of the disputed domain name, the Respondent knew, or at least should have known, that the Complainant's prior trade marks existed. The Complainant says that the Respondent's knowledge of the Complainant's prior rights is indicated by the fact that the BOUYGUES mark has been entirely reproduced in the disputed domain name together with the second part of the disputed domain name ("centralephotovoltaïque"), which makes reference to an industrial sector in which the Complainant operates.

The Complainant notes that the Respondent registered the disputed domain name using a privacy service but following the disclosure of its name and contact details it appears that its name is "centrale photo" and its organization is "bouygues-centralephotovoltaïque". This, says the Complainant, confirms that the Respondent does not intend to be identified and that it registered the disputed domain name in bad faith.

The Complainant notes that the disputed domain name resolves to a parking page which advertises a website building service and that email servers are configured for the disputed domain name, and sending emails through the disputed domain name creates confusion as to the source, sponsorship, affiliation or endorsement of the disputed domain name and is indicative of bad faith. It says that the Respondent is using an email address “[...]@bouygues-centralephotovoltaïque.com” to send brochures which ostensibly come from Bouygues Energies & Services that promote financial investments. The Complainant says that this is fraudulent and in bad faith and may easily result in the public thinking that the Complainant is contacting them particularly in circumstances that the Complainant undertakes activity in the energy sector under its trade mark and name “Bouygues Energies & Services”.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant owns numerous trade mark registrations for BOUYGUES including French trade mark number 1197243, registered on March 4, 1982. The disputed domain name wholly contains the BOUYGUES mark and is therefore confusingly similar to it. The addition of a hyphen and the term “centralephotovoltaïque”, which means in English photovoltaic power plant, does not prevent a finding of confusing similarity. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s BOUYGUES mark and the Complaint succeeds under the first element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that the Respondent has no connection with the Complainant in any way and is not an authorised dealer, distributor or licensee of the Complainant and has not been permitted by the Complainant to make any use of its prior rights. As it notes, BOUYGUES is a highly distinctive mark and the Panel understands it to correspond to the family name of the Complainant’s founder. The Complainant has submitted that as a result there is no reason for it to be used by the Respondent. The Complainant has also submitted that based on its searches no companies outside its own corporate group have registered the BOUYGUES mark and there is no evidence that the Respondent is commonly known by this mark. In this regard, the Panel notes that the disputed domain name resolves to a parking page which promotes and contains a link to Zoho, a company specialised in website building and not to any business using the “Bouygues” name or mark. Accordingly, the Complainant has submitted that the Respondent’s use of the disputed domain name cannot be considered as giving the Respondent any rights or legitimate interests arising from “*bona fide* offer of goods or services” or a “legitimate noncommercial or fair use of the disputed domain name” and it has asserted that in any event such use infringes the Complainant’s prior trade mark rights. This is particularly so given the underlying use of the disputed domain name for a fraudulent email scheme whereby the Respondent impersonates the Complainant. Such use of a domain name can never confer rights or legitimate interests upon a respondent.

In these circumstances, the Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to or to rebut the Complainant’s case or to explain its conduct and the Panel finds that for this reason and for the reasons set out under section C below that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The Complainant registered its BOUYGUES trade mark in 1982, many years before the registration of the disputed domain name. The BOUYGUES mark is highly distinctive and the Complainant has developed a very substantial international business in various industrial sectors under its mark and as a result has developed a significant international reputation in connection with its mark. In addition, the Panel notes that the disputed domain name includes the term “centralephotovoltaïque” when the Complainant operates in the energy sector and its Energy & Services division offers to create photovoltaic power plants for its clients, and therefore Internet users may very well assume that the disputed domain name is connected with the Complainant. For these reasons, the Panel finds that it is more than likely that the Respondent was well aware of the Complainant’s mark when it registered the disputed domain name.

Under paragraph 4(b)(iv) of the Policy there is evidence of registration and use of the disputed domain name in bad faith where a Respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant’s trade marks as to the source, sponsorship, affiliation or endorsement of the website.

Internet users seeing the disputed domain name would naturally assume that it would lead them to a business run by or connected with the Complainant in relation to photovoltaic power plants but instead they are directed to a parking page which advertises the Zoho website building service. The Panel finds that this amounts to confusing Internet users as to the source, sponsorship, affiliation or endorsement of the website in terms of paragraph 4(b)(iv) of the Policy which is evidence of registration and use in bad faith.

The Complainant has noted that that email servers are configured for the disputed domain name and has asserted that the Respondent is using an email address “[...]@bouygues-centralephotovoltaïque.com” to send a brochure (a copy of which was provided in evidence) which ostensibly comes from Bouygues Energies & Services and that promotes financial investments. Although the details of how the Respondent is benefiting from this correspondence are unclear, it is likely that it is attempting to misrepresent itself as being connected to or as representing the Complainant when this is not the case. This amounts to fraudulent conduct and is further indicative of the Respondent’s use of the disputed domain name in bad faith. The fact that the Respondent used a privacy service in an effort to hide its identity and that it registered the disputed domain name under the organization name “bouygues-centralephotovoltaïque”, likely in a fraudulent attempt to establish legitimacy, but has entirely failed to explain its conduct reinforces the Panel’s view of the Respondent’s bad faith.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complaint also succeeds under this 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-centralephotovoltaïque.com>, be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: May 4, 2023