

ADMINISTRATIVE PANEL DECISION

Bouygues v. Olalekan Frank, Fugazzibar
Case No. DAU2025-0005

1. The Parties

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

The Respondent is Olalekan Frank, Fugazzibar, Australia.

2. The Domain Name and Registrar

The disputed domain name <bouyguesconstruction.com.au> (the “Disputed Domain Name”) is registered with Domain Directors Pty Ltd..

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 23, 2025. On January 23, 2025, the Center transmitted by email to Domain Directors Pty Ltd. a request for registrar verification in connection with the Disputed Domain Name. On January 29, 2025, Domain Directors Pty Ltd. 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 .au Dispute Resolution Policy (the “Policy” or “.auDRP”), the Rules for .au Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .au Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 3, 2025. In accordance with the Rules, paragraph 5(a), the due date for Response was February 23, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 24, 2025.

The Center appointed Nicholas Weston as the sole panelist in this matter on February 26, 2025. 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 Euronext listed French company with operations in more than 80 countries, and group profit of EUR 56 billion in 2023. Its subsidiary, Bouygues Construction, has 32,500 employees, a presence in Australia, and is a world player in the fields of public and private buildings, transport infrastructure, energy and communications networks. The Complainant holds registrations for the trade mark BOUYGUES and variations of it in numerous jurisdictions, including Australian Trade Mark No. 816373 for the mark BOUYGUES CONSTRUCTION, registered by that Complainant on March 5, 2001 in class 37, Australian Trade Mark No. 1222869 for the mark BOUYGUES, registered on June 16, 2008 in classes 6, 19, and 37, and European Union Trade Mark No. 001589159 for the mark BOUYGUES CONSTRUCTION, registered on May 16, 2001 in class 37.

The Complainant is also the owner of the domain names <bouygues-construction.com> and <bouygues-construction.com.au>.

The Disputed Domain Name was registered on January 14, 2025. The Complainant has provided evidence that the Disputed Domain Name is inactive, resolves to an index page, and that it has been set up with MX servers configured.

5. Parties' Contentions

A. Complainant

The Complainant cites its trade mark registrations of the trade mark BOUYGUES, and BOUYGUES CONSTRUCTION, in various jurisdictions, as prima facie evidence of ownership.

The Complainant submits that the marks BOUYGUES and BOUYGUES CONSTRUCTION are distinctive and that its rights in these marks predate the registration of the Disputed Domain Name. It submits that the Disputed Domain Name is identical to its trade mark BOUYGUES CONSTRUCTION, because the Disputed Domain Name "incorporates the trade mark 'BOUYGUES CONSTRUCTION' in its entirety, without any addition or deletion" and that any confusing similarity is not alleviated by the ".com.au" country code Top-Level Domain ("ccTLD").

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Respondent has no trade mark rights in, license to use, or association with the BOUYGUES mark. The Complainant contends that "the Respondent is not known as the [D]isputed [D]omain [N]ame, but as 'Fugazzibar'". Further, the Complainant contends that the Disputed Domain Name resolves to an index page and that the Respondent did not make any use of Disputed Domain Name "since its registration, and it confirms that [the] Respondent has no demonstrable plan to use the [D]isputed [D]omain [N]ame. It demonstrates a lack of legitimate interests in respect of the [D]isputed [D]omain [N]ame."

Finally, the Complainant alleges that the registration and use of the Disputed Domain Name was, and currently is, in bad faith. On the issue of registration, the Complainant contends that the Respondent must have had the BOUYGUES trade mark in mind when it registered the Disputed Domain Name "given the distinctiveness of the Complainant's trade marks and reputation."

On the issue of use, the Complainant has supplied evidence that the Disputed Domain Name resolves to an inactive webpage, and claims that "the Respondent has not demonstrated any activity" and that it having been "set up with MX records [...] suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use".

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that, for the Complainant to succeed, it has the burden of proving the following:

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

A. Identical or Confusingly Similar

The Complainant must first establish that the Disputed Domain Name is identical with, or confusingly similar to, the Complainant's name, trade mark or service mark by demonstrating that it has rights in a trade mark at the date the Complaint was filed and, if that is the case, the Disputed Domain Name must also be identical or confusingly similar to the trade mark.

This Panel finds that the Complainant has rights in the BOUYGUES and BOUYGUES CONSTRUCTION trade marks acquired through use and registration.

Turning to whether the Disputed Domain Name is identical or confusingly similar to the BOUYGUES CONSTRUCTION trade mark, the Panel observes that the Disputed Domain Name comprises: (a) an exact reproduction of the Complainant's trade mark BOUYGUES CONSTRUCTION; (b) followed by the ccTLD ".com.au".

It is well established that the ccTLD, used as technical part of a domain name, may be disregarded (see: *BT Financial Group Pty Limited v. Basketball Times Pty Ltd*, WIPO Case No. [DAU2004-0001](#)). The comparison to be made is with the Second-Level portion of the Disputed Domain Name, specifically: "bouyguesconstruction".

It is also well established that, where a domain name incorporates the entirety of a trade mark (and only the trade mark), the domain name will normally be considered identical to that mark for purposes of auDRP standing.

Accordingly, the Panel finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that the Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to the Respondent 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 or services; or
- (ii) the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name even if the Respondent has acquired no trade mark 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 trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the BOUYGUES CONSTRUCTION trade mark. The Panel finds on the record that there is therefore a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and the burden is thus on the Respondent to produce evidence to rebut this presumption, see: *GlobalCenter Pty Ltd v. Global Domain Hosting Pty Ltd*, WIPO Case No. [DAU2002-0001](#).

The Respondent has failed to submit a Response and so has not shown that it has acquired any trade mark rights in respect of the Disputed Domain Name or that the Disputed Domain Name is used in connection with a bona fide offering of goods or services. There is no evidence to suggest that the Respondent has rights or a legitimate interest in the Disputed Domain Name, it has not provided evidence of demonstrated preparations to use the Disputed Domain Name, and the evidence is that the Disputed Domain Name resolves to an inactive index webpage. In the circumstances, such use does not amount to a bona fide offering of goods or services under the Policy. There has been no evidence adduced to show that the Respondent, "Fugazzibar", has been commonly known by the Disputed Domain Name, nor does any of the evidence demonstrate that the Respondent is making legitimate noncommercial or fair use of the Disputed Domain Name.

In the absence of a Response, the Panel finds that the Complainant has prior rights in the BOUYGUES CONSTRUCTION trade mark, which precede the Respondent's registration of the Disputed Domain Name by at least 24 years.

The Panel therefore finds that the Complaint fulfils the second condition in paragraph 4(a)(ii) of the Policy.

C. Registered or Subsequently Used in Bad Faith

The third element of the Policy that the Complainant must also demonstrate is that the disputed domain name has been registered or subsequently used in bad faith. Paragraph 4(b) of the Policy sets out certain circumstances to be construed as evidence of both.

It is uncontroversial that a domain name investor, or anyone else, can register a commonly used word as a domain name and hold it provided that the circumstances do not indicate illegitimate conduct or bad faith.

However, the evidence in this case indicates that the Respondent has registered and/or used the Disputed Domain Name in bad faith. A simple Internet search would have alerted the Respondent to the Complainant's prior rights, the Respondent's registration of the Disputed Domain Name incorporating the Complainant's trade mark could not be attributable to pure coincidence, and creates a presumption of bad faith. The mark BOUYGUES is not a common word in Australia. The Panel finds that the Respondent must have been aware of the relevant trade mark. This is evidence of the registration of a disputed domain name in bad faith. Moreover, the Panel notes that while the Disputed Domain Name does not resolve to an active website, the activation of MX servers on the identical Disputed Domain Name carries a significant risk of phishing activities, and further supports an inference of bad faith.

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

7. Decision

For all 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 <bouyguesconstruction.com.au> be transferred to the Complainant.

/Nicholas Weston/

Nicholas Weston

Sole Panelist

Date: March 8, 2025