

ADMINISTRATIVE PANEL DECISION

Bouygues v. Foulfoin Jacques Philippe
Case No. D2023-2090

1. The Parties

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

The Respondent is Foulfoin Jacques Philippe, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <bouygues-batiments-idf.com> is registered with Aerotek Bilisim Taahut Sanayi Ve Ticaret Ltd Sti. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2023. On May 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 12, 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 (Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 15, 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 May 16, 2023.

On May 15, 2023, the Center informed the parties in Turkish and English, that the language of the registration agreement for the disputed domain name is Turkish. On May 16, 2023, the Complainant requested English to be the language of the proceeding. The Respondent did not submit any comment on the Complainant’s submission.

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 in both English and Turkish, and the proceedings commenced on May 24, 2023. In accordance

with the Rules, paragraph 5, the due date for Response was June 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 14, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on June 19, 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 company with its registered seat in France. It is active in more than 80 countries in the fields of construction, energy and related services, media and telecommunications.

The Complainant is the owner of the BOUYGUES BATIMENT trademark, which is registered in various jurisdictions worldwide. Among others, the Complainant owns the European Union Trademark Registration No. 001217223, registered on June 23, 2000, and the International Trademark Registration No. 723515, registered on November 22, 1999, covering protection for numerous building construction services as protected in class 37 (Annex 4 to the Complaint).

The Complainant further owns and operates various domain names incorporating its BOUYGUES BATIMENT trademark, such as "www.bouygues-batiment-ile-de-france.com", which is used as the official website of one of the Complainant's group members (Annex 5 and 6 to the Complaint).

The Respondent is reportedly from Türkiye, whereas its true identity remains unclear due to seemingly false or at least incomplete contact information when registering the disputed domain name, since the couriers sent by the Center have been undeliverable.

The disputed domain name was registered on May 9, 2023.

The disputed domain name resolves to a landing page in Turkish language, indicating that the website is under construction (Annex 7 to the Complaint). Furthermore, the Respondent configured MX records for the disputed domain name, which enables the Respondent to send and receive emails using the disputed domain name.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its BOUYGUES BATIMENT trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1 Language of the Proceeding

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the registration agreement is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceedings in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center's communication about the language of the proceedings, even though communicated in Turkish and in English. The Panel particularly notes that the Respondent was given the opportunity to respond in Turkish and that this opportunity remained unused by the Respondent.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.2 Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

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

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in BOUYGUES BATIMENT.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered trademark, as it is incorporating the BOUYGUES BATIMENT trademark in its entirety.

As stated at section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other characters or terms would generally not prevent a finding of confusing similarity. Here, the addition of the letters "idf" (probably used as an acronym for "ile de France", which is a French region where the Complainant operates) does not, in view of the Panel, serve to prevent a

finding of confusing similarity between the disputed domain name and the Complainant's BOUYGUES BATIMENT trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production of evidence shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license to use the Complainant's trademark within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name, particularly as the disputed domain name has not been actively used since its just recent registration in May 2023. In the absence of a response, the Respondent has also failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c), or provide any other evidence of rights or legitimate interests in the disputed domain name.

Quite the opposite, the Panel notes that the nature of the disputed domain name carries a risk of implied affiliation or association and that such implied affiliation was obviously the intent of the Respondent. See section 2.5.1 of the [WIPO Overview 3.0](#).

Hence, the Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name according to the Policy, paragraph 4(a)(ii) and 4(c).

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's trademark in mind when registering the disputed domain name. The Panel believes that the Respondent deliberately attempted to create a likelihood of confusion among Internet users and/or to freeride on the goodwill of the Complainant's BOUYGUES BATIMENT trademark, likely for commercial gain and/or to disrupt the Complainant's business. Consequently, the Panel has no doubt that the Respondent has registered the disputed domain name in bad faith.

Furthermore, the Panel finds that the Respondent is using the disputed domain name in bad faith, even though the disputed domain name is linked to a landing page only (Annex 7 to the Complaint). In line with the opinion of numerous UDRP panels before (*cf. Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), and section 3.3 of the [WIPO Overview 3.0](#)), the Panel believes that the non-use of a domain name does not prevent a finding of bad faith use.

Applying the passive holding doctrine as summarized in section 3.3 of the [WIPO Overview 3.0](#), the Panel assesses the Complainant's trademark BOUYGUES BATIMENT as distinctive, so that any good-faith use of the Complainant's trademark in the disputed domain name by the Respondent appears to be unlikely. Furthermore, the Panel accepts the failure of the Respondent to submit a response to the Complainant's contentions as an additional indication for bad faith. Also, the Panel believes that the activated MX email

server for the disputed domain name creates a real or implied ongoing threat to the Complainant, since the disputed domain name, even if not associated to an active website, may be used by the Respondent to mislead customers looking for the Complainant in their false belief that any email sent from the disputed domain name originates from the Complainant, possibly for fraudulent activities.

In addition, the Respondent has seemingly provided false or at least incomplete contact information when registering the disputed domain name, particularly since the couriers sent by the Center have been undeliverable. The Panel does not see any reason in hiding the true identity by providing false or incomplete contact details when registering the disputed domain name except to make it difficult for the Complainant to protect its trademark rights.

All in all, the Panel cannot conceive of any plausible and legitimate use of the inherently misleading disputed domain name that would be in good faith, except with an authorization of the Complainant.

Taking all facts of the case into consideration, the Panel is convinced that this is a typical cybersquatting case, which the UDRP was designed to stop.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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-batiments-idf.com>, be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: July 3, 2023