Decision for dispute CAC-UDRP-100440

Case number	CAC-UDRP-100440
Time of filing	2012-08-23 15:11:57
Domain names	lakshmimittalsteel.info, arcelormittal-usa.biz, arcelormittal-usa.info , arcelormittal-usa.net, arcelor-mittal-steel.info, arcelormittalcareer.info, arcelormittalcontact.info, lakshmi-mittal-steel.info, lakshmi-mittal-steel.biz, lakshmi-mittal-steel.com , arcelormittal-usa.org

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	ArcelorMittal SA

Respondent

Name	Bruce Boggio

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided decision relating to the disputed domain names (hereinafter the "Domain Names")

IDENTIFICATION OF RIGHTS

The Complainant has shown that it is the owner of international registration No. 947686 of 3 August 2007, designating many countries including the U.S. for the trademark ArcelorMittal. The same trademark is also registered with the USPTO, under No. 947686 (with effect since 3 August 2007). Moreover, the Complainant is the owner of trademarks MITTAL and MITTAL STEEL, registered at a Community level with effects since 2005.

The Complainant also owns and communicates on the Internet through various websites worldwide. The main one is “www.arcelormittal.com”(registered on 21/01/2006), but the Complainant has also registered domain names similar to the trademark “ARCELORMITTAL” such as:
arcelormittal.net registered on 25/06/2006
arcelormittal.info registered on 25/06/2006
arcelormittal.org registered on 18/09/2011
arcelormittal.biz registered on 25/06/2006
arcelormittal.us registered on 22/12/2006
arcelormittal.com.au registered on 04/06/2008
To demonstrate ownership over these domain names, the Complainant has enclosed all relevant Whois under Annex 7 to the Complaint.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a steel manufacturer operating worldwide. It is the largest steel producing company in the world (the Complainant is cited in Annex 4 to the Complaint as the Top 40 largest steel producer in the world according to the World Steel Association), and the market leader in steel for use in automotive, construction, household appliances and packaging with operations in more than 60 countries. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

In 2011 the CNN Fortune Global 500 World's Biggest Companies ranked the Complainant on the 74th position in the world (Annex 5 to the Complaint is the extract of 2011 CNN Fortune Global 500 World's Biggest Companies).

The name Lakshmi Mittal is the name of the Complainant's CEO.

The Complainant has received numerous decisions in its favour regarding disputes in relation with its trademarks, such as:
- WIPO case No. D2011-1154 <arcelormittalspa.com>
- WIPO case No. D2010-2049, < mittal-steel.com>
- WIPO case No. D2010-0899, < arcelorcement.com>, <arcelorchemicals.com>, <arcelorchemicals.net>, <arcelorlaboratories.com>, <arcelorlabs.com>.
- CAC case No. 100361, < arcelormittal.pro>
- CAC case No. 100359, <accelormittal.com> <arcelormitta.com>
- CAC case No. 100358, <arcelormittal.biz>, <arcelormittal.info>, <arcelormittal.org>
- WIPO case No. D2011-0326 <lakshmi-mittal.com>
- WIPO case No. D2011-0322 <lakshmimittal.com>

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

The Domain Names are the following: LAKSHMIMITTALSTEEL.INFO, ARCELORMITTAL-USA.BIZ, ARCELORMITTAL-USA.INFO, ARCELORMITTAL-USA.NET, ARCELOR-MITTAL-STEEL.INFO, ARCELORMITTALCAREER.INFO, ARCELORMITTALCONTACT.INFO, LAKSHMI-MITTAL-STEEL.INFO, LAKSHMI-MITTAL-STEEL.BIZ, LAKSHMI-MITTAL-STEEL.COM, ARCELORMITTAL-USA.ORG.

Most of the Domain Names consist of the trademark ARCELORMITTAL followed by a descriptive term, such as a reference to the territory (USA), to the Complainant's field of activity (STEEL), to a specific function inside the Complainant's company (CAREER), or to the Complainant's contact information (CONTACT).

Other Domain Names consist of the name of the Complainant's CEO, LAKSHMI MITTAL, where MITTAL is also a registered trademark, followed by the descriptive term STEEL.

Previous UDRP cases have established the reputation of the trademarks ARCELOR MITTAL, and MITTAL (see for instance Arcelormittal v. Mesotek Software Solutions Pvt. Ltd. , WIPO Case No. D2010-2049; Mittal Steel Technologies Limited, Mittal Steel Company NV and Arcelor SA v. Jean Frederic Serete, WIPO Case No. D2006-1353; ArcelorMittal Legal Affairs Corporate, Vanisha Mittal, Aditya Mittal v. All Illumination, Vanisha Mittal, info@setrillonario.com, WIPO Case No. DME2010-0006).

The addition of the gTLDs ".com, net, info, biz, org" and the descriptive terms "usa, steel, career, contact" are not sufficient to escape the finding that the Domain Names are confusingly similar to a trademark in which the Complainant has rights.

All registered Domain Names convey to the Internet user the impression that they are connected to the Complainant's trademarks and activity. The addition of the name of the Complainant's CEO to the Complainant's well-known trademark is a further source of confusion.

For all the aforesaid reasons the Panel is satisfied that the first requirement of the Policy is met.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

There is a consensus view among UDRP Panelists that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Complainant affirms that there is no relationship whatsoever with the Respondent. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither licence nor authorization has been granted to the Respondent to make any use, or apply for the registration of the Domain Names by the Complainant.

Moreover, the Complainant has shown that the Domain Names lead to GoDaddy's parking pages containing pay-per-click links among which certain providing connection to products and services competitive with those of the Complainant.

The unauthorized use of Domain Names incorporating third parties' well-known trademarks to access webpages incorporating pay-per-click or commercial links related to the Complainant's activities cannot be considered a fair trademark use nor a bona fide offering of goods or services and therefore does not establish rights or legitimate interests (see among others: See, e.g., Easy Gardener Products, Inc. v. Whois Privacy Protection Service, Inc. / Demand Domains, Inc., WIPO Case No. D2010-1185; VIVO S.A. and PORTELCOM PARTICIPAÇÕES S.A. v. Domains By Proxy - NA Proxy Account Niche Domain Proxy Manager, WIPO Case No. D2010-0925; Overstock.com, Inc. v. Metro Media, WIPO Case No. DME2009-0001; Fifth Third Bancorp v. Texas International Property Associates, WIPO Case No. D2007-0537; MasterCard International Incorporated v. Paul Barbell, WIPO Case No. D2007-1139, Shaw Industries Group, Inc., and Columbia Insurance Company v. Parth Shah, WIPO Case No. D2007-1368, and Alfa Laval AB and Alfa Laval Corporate AB v. Alfalava.com, WIPO Case No. D2007-1881).

In the absence of any contrary statement from the Respondent, the Panel is satisfied that also the second requirement under the Policy is met.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

As to the registration of the Domain Names in bad faith, the distinctive character of the Complainant's trademarks and their reputation is such that the Respondent could not ignore their existence at the time he registered the Domain Names.

As to the use of the Domain Names, according to Paragraph 4(b)(iv) of the Policy evidence of bad faith exists when by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's web site or location or of a product or service on its web site or location.

The Complainant has shown that the Domain Names lead to parking pages containing pay-per-click links. Some of these links refer to Complainant's competitors. As previous Panelists have concluded in prior decisions, it is irrelevant whether Respondent is taking direct profit from the pay-per-click links contained in the parking pages. Respondent might not be directly benefiting financially from using the GoDaddy link parking pages, but GoDaddy is financially benefiting from the

sponsored links, and GoDaddy is acting on behalf of Respondent. Respondent must accept the consequences of the actions of its agent, in this case GoDaddy (see Get Away Today.Com Inc. v. Warren Gilbert, WIPO Case No. DCO2010-0021).

Moreover, the registration and use of the Domain Names incorporating the Complainant's well-known trademarks mislead Internet users as to the source, sponsorship, affiliation, or endorsement of the Respondent's on-line location by the Complainant.
As stated in Microsoft Corporation v. J. Holiday Co., WIPO Case No. D2000-1493, "consumers expect to find a company on the Internet at a domain name address comprised of the company's name or trademark". As this is not the situation in the present case, the use by the Respondent of the Domain Names is confusing and misleading and is a further indication that the Domain Names were registered and are being used in bad faith.

Therefore, by registering the Domain Names the Respondent is attempting to trade unfairly on the Complainant's valuable goodwill established in its well-known registered trademarks ARCELOR MITTAL and MITTAL.

All considered, the Panel determines that Respondent has intentionally attempted to attract for commercial gain Internet users to its website by creating a likelihood of confusion with Complainant's mark as to source, sponsorship, affiliation, or endorsement of Respondent's website. Respondent registered and has used the Domain Names in bad faith within the meaning of paragraph 4(b) of the Policy.

For all the aforementioned reasons, the Panel concludes that the Domain Names have been registered and are used in bad faith.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

1. - The Domain Names are confusingly similar to earlier Complainant's trademarks.

2. - The Complainant shows a prima facie case that the Respondent lacks rights and legitimate interests in the Domain Names;

3. The Respondent registered and is using the Domain Names to intentionally attempt to attract, for commercial gain, Internet users to its on line location(s), by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's online location. Under Paragraph 4(b)(iv) of the Policy such a circumstance constitutes evidence of bad faith.

Therefore all Domain Names shall be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **LAKSHMIMITTALSTEEL.INFO**: Transferred
2. **ARCELORMITTAL-USA.BIZ**: Transferred
3. **ARCELORMITTAL-USA.INFO** : Transferred
4. **ARCELORMITTAL-USA.NET**: Transferred
5. **ARCELOR-MITTAL-STEEL.INFO**: Transferred
6. **ARCELORMITTALCAREER.INFO**: Transferred
7. **ARCELORMITTALCONTACT.INFO**: Transferred
8. **LAKSHMI-MITTAL-STEEL.INFO**: Transferred

9. **LAKSHMI-MITTAL-STEEL.BIZ**: Transferred
10. **LAKSHMI-MITTAL-STEEL.COM** : Transferred
11. **ARCELORMITTAL-USA.ORG**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2012-09-30

Publish the Decision