Decision for dispute CAC-UDRP-100831

Case number	CAC-UDRP-100831
Time of filing	2014-07-07 11:09:58
Domain names	arcel0rmittal.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	ARCELORMITTAL S.A.

Complainant representative

Organization	Nameshield (Anne Morin)

Respondent

Organization	Anton M Bahtin

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant has established that he had prior rights in the international trademark ARCELORMITTAL.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:
The Complainant, ARCELORMITTAL S.A., is the largest steel producing company in the world and is the market leader in steel for use in automotive, construction, household appliances and packaging with operations in over 60 countries. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant is the owner of the international trademark ARCELORMITTAL n°947686 registered on August 3, 2007.

The Complainant also owns several domain names, including the trademark ARCELORMITTAL, such as <arcelormittal.biz>, <arcelormittal.co.uk> or <arcelormittal.com>.

The disputed domain name <arcel0rmittal.com> was registered on January 30, 2014.

On June 19, 2014, a cease-and-desist letter has been sent to the Respondent, but the Respondent did not reply.

The Complainant initiated a UDRP action on July 7, 2014.

The Respondent failed to respond to the complaint before the official deadline. On July 30, 2014, the Czech Arbitration Court declared him in default, in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) and the CAC's UDRP Supplemental Rules of the Czech Arbitration Court (the Supplemental Rules), and advised him accordingly.

As no administratively compliant Response has been filed in this case, a simplified decision is due.

However, the Respondent made an offer to negotiate the transfer of the contested domain name. A 10-day suspension was requested by the Complainant to follow up on these negotiations.

As the negotiations did not succeed, the proceedings were resumed on August 7, 2014.

Currently, the website attached to <arcel0rmittal.com> is inactive.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant states that the disputed domain name <arcel0rmittal.com> is confusingly similar to its trademark ARCELORMITTAL.

According to the Complainant, the replacement of the letter "O" by the number zero "0" is not sufficient to escape the finding that the domain name is confusingly similar to the trademark and branded goods ARCELORMITTAL. This is a clear case of typosquatting.

Furthermore, the Complainant contends that the addition of the gTLD ".com" does not change the overall impression of the designation as being connected to the trademarks of the Complainant. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

So the disputed domain name is confusingly similar to the Complainant's trademark.

The Complainant claims that the Respondent has no rights or legitimate interests in respect of the domain name. Neither license nor authorization has been granted by the Complainant to the Respondent to make any use, or apply for registration of the disputed domain name.

According to the Whois information, the Respondent is "Anton M Bahtin". Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name (NAF - FA699652 - Braun Corp. v. Loney; NAF - FA139720 - Tercent Inc. v. Lee Yi).

The website in relation to the disputed domain name <arcel0rmittal.com> provides a web page with the Complainant's figurative trademark, the caricature of the Complainant's CEO Lakshmi Mittal, together with the following link: antonygallery@gmail.com. This shows the lack of legitimate interest of the Respondent on the disputed domain name.

Finally, the Complainant states the Respondent did not reply to the cease-and-desist letter sent to him.

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain name.

Given the distinctiveness of the Complainant's trademark and reputation, the Complainant claims that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic.

Moreover the Complainant contends, that the Respondent could not have ignored the ARCELORMITTAL trademark because its website provides a page with the Complainant's figurative trademark and the caricature of the Complainant's CEO Lakshmi Mittal.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

The Complainant therefore requests for transfer of the disputed domain name.

RESPONDENT:
No response was filed by the Respondent.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is 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).

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 Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

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

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

The Complainant has established that he had prior rights in the trademark ARCELORMITTAL.
The Panel notes that the contested domain name <arcel0rmittal.com> is visually and phonetically similar to <arcelormittal.com>, domain name owned by the Complainant. The replacement of a single character does not prevent the risk of confusion, especially when the letter “O” is replaced by the number “0”, as they look similar.
A domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name. (WIPO Case No.D2002-0775, Wachovia Corporation v. Peter Carrington, <wochovia.com> inter alia; WIPO Case No.D2004-0971, Fuji Photo Film U.S.A., Inc. v. LaPorte Holdings, <fuijifilm.com>)
Additionally, adding “.com” to Complainant's trademark is not sufficient to distinguish the domain name from the trademark owned by the Complainant. (WIPO Case No.D2000-1160, AltaVista Company v. O.F.E.Z. et al., <altavistacom.com>)
This Panel therefore finds that the first requirement of paragraph 4(a)(i) of the Policy is satisfied.

The Respondent has no connection or affiliation with the Complainant, which has not licensed or otherwise authorized the Respondent to use or apply for any domain name incorporating the Complainant’s trademark.

The Respondent does not appear to make any legitimate use of the domain name for non-commercial activities. Also, the Respondent does not appear to have been commonly known by the domain name.
The content displayed on the web page at the time of the complaint reflects no bona fide use or offering of goods or services.
Accordingly, the Panel finds that Complainant has satisfied the burden of proof with respect to paragraph 4(a)(ii) of the Policy.

Based on the worldwide activity and international reputation of the Complainant, the Panel finds that the Respondent knew or should have known about the ARCELORMITTAL trademark. This finding is reinforced by the website's content at the time of the complaint. Indeed, the web page displayed a reproduction of the ARCELORMITTAL logo and a caricature of ARCELORMITTAL's CEO, Mr. Lakshmi Mittal. It is obvious that the Respondent had knowledge of the Complainant and his trademark.

As previously established, the registration of <arcel0rmittal.com> appears to be typosquatting. This provides evidence of bad faith registration.

The web page is currently inactive, but it does not prevent a finding of bad faith of the registration and previous use.

Finally, a direct link to a PayPal account appears at the top of the web page, reflecting the Respondent's intention to commercially profit from the domain name.

Considering the foregoing, the Panel concludes that Respondent registered and is using the Domain Name in bad faith and that the requirements of paragraph 4(a)(iii) of the Policy are satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCEL0RMITTAL.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2014-08-21

Publish the Decision