Decision for dispute CAC-UDRP-100850

Case number	CAC-UDRP-100850
Time of filing	2014-08-22 11:33:14
Domain names	us-arcelormittal.com

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	ArcelorMittal S.A.

Complainant representative

Organization	Nameshield (Anne Morin)

Respondent

Name	CUVERT ROBERT

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the holder of numerous registrations and/or applications for trademarks, comprising the wording “ArcelorMittal”, including the International trademark registration 947686 for the word mark “ArcelorMittal’, registered on 3 August 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42. The Complainant is also the holder of and actively uses the domain name “arcelormittal.com”, created on 27 January 2006.

FACTUAL BACKGROUND

The Complainant, ArcelorMittal S.A., is a company incorporated under the laws of Luxemburg. Complainant is the licensee of numerous trademark registrations, comprising the wording “ArcelorMittal”. These trademarks include the International trademark registration 947686 for the word mark “ArcelorMittal’, registered on 3 August 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 (hereafter “ArcelorMittal trademarks”).

The Complainant uses these trademarks inter alia in relation to its steel production business, for which the Complainant and its ArcelorMittal trademarks are well-known.

The Respondent registered the disputed domain name “us-arcelormittal.com” on 1 July 2014. The disputed domain name is

currently inactive.

PARTIES CONTENTIONS

No administratively complaint Response has been filed.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

Confusing similarity of the Domain Name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since Complainant is the owner of the ArcelorMittal trademarks, which are used in connection with its steel production business, it is clearly established that there is a trademark in which Complainant has rights.

The Panel considers the disputed domain name <us-arcelormittal.com> to be confusingly similar to the ArcelorMittal trademarks. The Panel is of the opinion the addition of the term "us" (corresponding to a geographical term as it refers to the United States) and a hyphen at the beginning of the Disputed Domain Name, is not sufficient to escape the finding that the

Domain Name is confusingly similar to the Complainant's trademarks (See CAC Case No. 100440, ArcelorMittal S.A. v. Bruce Boggio).

Accordingly, the Complainant has made out the first of the three elements that it must establish.

No legitimate rights

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the domain names.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that Respondent has no right or legitimate interest in the Domain Name in order to shift the burden of proof to the Respondent. See: Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094 (championinnovation.com); Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455 (croatiaairlines.com); Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110 (belupo.com).

The Panel notes that based on evidence submitted by the Complainant and not contested by the Respondent the Respondent has not been commonly known by the Domain Name and it has not acquired trademark or service mark rights in respect of name "ARCELORMITTAL". Furthermore, the Respondent's use and registration of the Disputed Domain Name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the Domain Name. In fact, the Respondent has not been using the domain name since it resolves to an inactive page. Such use is not a bona fide use. See e.g. NAF/FA190644 (nicklausgolf.com - "Respondent's use of a domain name confusingly similar to Complainant's mark(s) to divert Internet users to websites unrelated to Complainant's business does not represent a bona fide offering of goods or services under Policy 4(c)(i) or a legitimate noncommercial or fair use under Policy 4(c)(iii)"); NAF/FA93554 (bigdog.com – finding no legitimate use when respondent was diverting consumers to its own web site by using complainant's trademark(s)); NAF/FA96356 (broadcom2000.com - finding no rights or legitimate interests because the respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use); NAF/FA96209 (galluppll.com - finding that the respondent does not have rights in a domain name when the respondent is not known by the mark); NAF/FA740335 (cigaraficionada.com - finding that the respondent was not commonly known by the "cigaraficionada.com" domain name); NAF/FA881234 (stlawu.com - concluding that the respondent has no rights or legitimate interests in a disputed domain name where there is no evidence in the record indicating that the respondent is commonly known by the disputed domain name); WIPO/D2000-0020 (saint-gobain.net – finding no rights or legitimate interest where the respondent was not commonly known by the mark and never applied for a license or permission from the complainant to use the trademarked name); WIPO/D2000-0403 (charlesjourdan.com – finding no rights or legitimate interests where (1) the respondent is not a licensee of the complainant; (2) the complainant's prior rights in the domain name precede the respondent's registration; (3) the respondent is not commonly known by the domain name in question).

These verified allegations are sufficient to make out a prima facie case and shift the burden of proof to the Respondent. In the absence of a rebuttal by the Respondent and based on the case file, the Panel considers that the second requirement of Paragraph 4(a) of the Policy is, therefore, satisfied (See CAC Case No. 100707, Mount Gay Distilleries Limited v. shan gai gong zuo shi; WIPO Case No. D2007-0368, Teva Pharmaceutical USA, Inc. v. US Online Pharmacies; WIPO Case No. D2003-0796, Grupo Televisa, S.A., Televisa, S.A. de C.V., Estrategia Televisa, S.A. de C.V., Videoserpel, Ltd. v. Party Night Inc., a/k/a Peter Carrington).

Bad faith

The Complainant must prove on the balance of probabilities that the Disputed Domain Name was registered in bad faith and that it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006 1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (See BellSouth Intellectual Property Corporation v. Serena, Axel, WIPO Case No. D2006-0007, where it was held that the respondent acted in bad faith when registering the disputed domain name, because widespread and long-standing advertising and marketing of goods and services under the trademarks in question, the inclusion of the entire trademark in the domain name, and the similarity of products implied by addition of telecommunications services suffix ("voip") suggested knowledge of the complainant's rights in the trademarks).

In the present case, the Disputed Domain Name has been registered on 1 July 2014. The trademarks invoked by Complainant have been registered in 2007 and 2009. Moreover, the wording "ArcelorMittal" is only known in relation to the Complainant. It has no meaning whatsoever in English or in any other language. The Complainant also shows that a Google search for the term "ArcelorMittal" provides links only in connection with the Complainant. It can therefore be concluded that the Respondent was or at least should have been aware of the Complainant's business and related trademarks.

The passive holding of a domain name amounts to bad faith when it is difficult to imagine any plausible future active use of the domain name by the Respondent that would be legitimate and not infringing the Complainant's well-known mark or unfair competition and consumer protection legislation (See Inter-IKEA v. Polanski, WIPO Case No. D2000-1614; Inter-IKEA Systems B.V. v. Hoon Huh, WIPO Case No. D2000-0438; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

Other circumstances that evidence bad faith registration and use in the event of passive use of the domain name are:
- the fact that Complainant's trademark has a strong reputation and is widely used,
- the absence of evidence whatsoever of any actual or contemplated good faith use,
- the taking of active steps by a Respondent to conceal its identity or the provision of false contact details (Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

In the present case, the Complainant demonstrates that its ArcelorMittal trademarks have a strong internet presence. Given the distinctiveness of the Complainant's trademarks and reputation, the Panel considers that it is impossible to imagine any plausible future active use of the Domain Name by the Respondent that would be legitimate and not infringing the Complainant's well-known marks or unfair competition and consumer protection legislation.

Finally, the fact that the Respondent used a WHOIS privacy service constitutes additional evidence of the Respondent's bad faith (See CAC Case No. 100849, ArcelorMittal S.A. v. david trapp).

Considering the above, the Panel finds that the Complainant has made out the three elements that it must establish.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **US-ARCELORMITTAL.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2014-10-14

Publish the Decision