Decision for dispute CAC-UDRP-101267

Case number	CAC-UDRP-101267
Time of filing	2016-08-18 09:20:54
Domain names	ARCELORMILTAL.COM

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	davd anamo

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant bases its Complaint on the following trademark:

- ARCELORMITTAL, International registration No. 947686, of 3 August, 2007, claiming protection for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42, designating several countries, such as, amongst others the European Union.

FACTUAL BACKGROUND

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

The Complainant in these administrative proceedings is Arcelormittal S.A., a multinational steel manufacturing corporation. The Complainant is the largest steel and mining company in the world and is 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.

The Complainant operates under the trademark ARCELORMITTAL, registered in several countries world-wide, and owns several domain names which incorporate its ARCELORMITTAL trademark, inter alia <arcelormittal.com>.

The disputed domain name <arcelormiltal.com> has been registered on 2 August 2016, and is currently linked to an inactive website.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant's contentions are the following:

The disputed domain name is similar to the Complainant's earlier trademark ARCELORMITTAL, because the addition of a letter "L" and the deletion of a letter "T", as well as the gTLD .com are not sufficient to escape the finding that the domain name <arcelormiltal.com> is confusingly similar to the Complainant's trademark and to change the overall impression of the disputed domain name as being connected with the Complainant's trademark. The domain name <arcelormiltal.com> contains an obvious misspelling of the Complainant's trademark.

Previous panels have found that the slight spelling variations do not prevent a disputed domain name from being confusing similar to the complainant’s trademark (see, amongst others, CAC Case No. 101233, ARCELORMITTAL v. Contact Privacy Inc. Customer 124632448, <arcelormilttal.com>).

The Respondent lacks rights or legitimate interests in the disputed domain name. The domain name <arcelormiltal.com> is registered in the name of a certain "davd anamo", who is not known to the Complainant. The Complainant and the Respondent have no business or other kind of relationships. The Complainant never granted a license or other kind of authorisation to the Respondent to use its trademark, or to apply for the registration of the disputed domain name.

The website in relation with the disputed domain name is inactive since its registration. Past panels have held that the lack of use of a domain name is considered as an important indicator of the absence of legitimate interest by the Respondent (see, amongst others, NAF Case No. FA 933276 George Weston Bakeries, Inc. vs. McBroom).

The disputed domain name was registered in bad faith because, given the distinctive character and reputation of the Complainant's trademark, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights in its trademark. Moreover, the Respondent intentionally registered as domain name a misspelling of a third party's trademark. Previous Panelists have found that the registration of a misspelled well-known trademark is evidence of bad faith (NAF Case No. FA 877979, Microsoft Corp. v. Domain Registration Philippines).

The disputed domain name has been used in bad faith because the domain name is inactive since its registration. The incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

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).

The Complainant is the owner of the international trademark ARCELORMITTAL, designating several countries worldwide. The disputed domain name consists of the second-level domain name "arcelormilttal", followed by the gTLD ".com". While the gTLD has no impact in the assessment of confusing similarity under paragraph 4(a)(i) of the Policy because it is a technical requirement of a domain name, the two signs ARCELORMITTAL (trademark), on the one side, and ARCELORMILTAL (domain name), on the other side, are practically identical. The difference between the two signs lies in the substitution of one of the two letters "T" with a letter "L". This slight change is hardly perceivable in view of the length of the signs, of the fact that the letters "T" and "L" are very similar one another, and of the fact that the two letters are placed at the

end of the sign and not at its beginning.

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).

As also confirmed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), 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, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

In the instant case, the Complainant maintains that the Respondent is not known to the Complainant and that the Complainant never licensed its trademark to the Respondent, nor authorised the Respondent to include its trademark in a domain name.

Moreover, the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, nor appears to be known by the disputed domain name.

As the Respondent failed to object to the Complainant's allegations, the Panel takes the view that the Complainant's statements are sufficient to establish a prima facie lack of rights or legitimate interests of the Respondent in the disputed domain name.

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).

The Complainant's trademark is highly distinctive and it is not conceivable that the Respondent registered the disputed domain name without having in mind said trademark. Moreover, numerous UDRP Panels have found that typosquatting itself constitutes bad faith (see, amongst others, VMWARE, INC. v. Bola Branky, WIPO Case No. D2016-0073; Halliburton Energy Services, Inc. v. Registration Private, Domains By Proxy, LLC / Name Redacted, WIPO Case No. D2015-2094; Calvin Klein Trademark Trust, Calvin Klein, Inc. v. Moniker Privacy Services, WIPO Case No. D2015-2305).

As far as use in bad faith is concerned, the domain name <arcelormiltal.com> resolves to a web page stating that the website is "Under Construction". Prior Panels have found the abusive practice of typosquatting evidence of bad faith registration and use (see, amongst Others Manson Capital Ltd. v. handeyenerli, WIPO Case No. D2015-2358; VMWARE, INC. v. Bola Branky, WIPO Case No. D2016-0073, etc.). The fact that the Respondent passively holds the disputed domain name does not change this finding.

Finally, in accordance with the powers conferred to the Panel by paragraph 10 of the UDRP Rules, the Panel has engaged in some researches on the Respondent's name and contact details as indicated in the relevant Whois. The name of the Respondent is "davd anamo". A Google search on this name, did not reveal any entry. Despite that the fact that no one named "davd anamo" appears on a powerful search engine as Google is not incontrovertible evidence that this individual does not exist, there are high chances that this is so, as nowadays almost everyone appears on the Internet, and as the other contact details provided in the Whois are certainly false. As a matter of fact, further searches on the Respondent's address indicated in the Whois, revealed that a street named "Rue la Voix" in Paris does not exist. Needless to say, the house number 4800, which is curiously similar to the postal code number 4800, also referred to in the Whois.

Therefore, the Panel takes the view that the contact details indicated at the time of the registration of the disputed domain

name are false, and this is additional evidence of registration and use of the domain name 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

The disputed domain name is confusingly similar to the Complainant's trademark as the domain name was created by changing one letter in the middle to a similar-looking letter.

The Panel finds that the Complainant has provided prima facie evidence that the Respondent lacks rights and legitimate interests in the disputed domain name. The Complainant never authorised the Respondent to register a domain name practically identical to its trademark. Moreover, the Complainant never licensed, nor has any kind of business relationship with the Respondent. Finally, there is no evidence that the Respondent has been known by the disputed domain name.

The Panel finds that the Respondent registered and is being using the disputed domain name in bad faith, as the domain name is a typosquatting of the Complainant's trademark and as the Respondent provided false contact details at the time of the registration of the domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMILTAL.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2016-09-28

Publish the Decision