Decision for dispute CAC-UDRP-101542

Case number	CAC-UDRP-101542
Time of filing	2017-05-19 08:48:21
Domain names	arcelorm1ttal.com

Case administrator

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

Complainant

Organization	ArcelorMittal (Société Anonyme)

Complainant representative

Organization	Nameshield (Anne Morin)

Respondent

Name	Karen Burney

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings between the parties to this dispute or relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns a trademark registration for the word trademark "ARCELORMITTAL", under International registration No. 947686 dated August 3, 2007.

FACTUAL BACKGROUND

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

The Complainant states that 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 more than 60 countries. Additionally, it holds sizable captive supplies of raw materials and operates extensive distribution networks

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

The Complainant also owns an important domain names portfolio, including the same distinctive wording

"ARCELORMITTAL".

The disputed domain name was registered on May 11, 2017 by Karen Burney, the Respondent.

The website in relation with the disputed domain name resolved, at the time of the filing of the Complaint, to a parking page with pay per click links.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

I. The disputed domain name is confusingly similar to the protected mark.

The Complainant states that the disputed domain name is confusingly similar to its trademark ARCELORMITTAL®.

The replacement of the letter “i” by the number one "1" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and branded goods ARCELORMITTAL®. This is a case of typo-squatting.

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.

II. The Respondent does not have any rights or legitimate interest in the disputed domain name.

According to the WIPO case no. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd., the 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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use the trademark ARCELORMITTAL®. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that he is not related in any way to the Complainant’s business.

The website in relation with the disputed domain name resolved, at the time of the filing of the Complaint, to a parking page with pay per click links.

The Complainant asserts that a fraudulent e-mail with a request for an “urgent invoice payment” has been sent using the disputed domain name and the name of Aditya Mittal, CFO of ArcelorMittal and CEO of ArcelorMittal Europe. In consequence, the Complainant asserts that the disputed domain name was created for the purpose of creating a fraudulent e-mail address with the intention of creating likelihood of confusion in order to cause undue payment.

The Complainant asserts that this consists in a case of scamming. Please see for instance: WIPO D2014-1387 Tetra Laval Holdings & Finance S.A. v. VistaPrint Technologies Ltd.

The Complainant claims that the Respondent has no rights or legitimate interests to the disputed domain name.

III. The disputed domain name has been registered and is being used in bad faith.

The Complainant states that the disputed domain name was created for the purpose of creating a fraudulent e-mail address

with a request for an “urgent invoice payment”, by using the name of Aditya Mittal, CFO of ArcelorMittal and CEO of ArcelorMittal Europe. Thereby, the Complainant believes that the use of the disputed domain name for “scamming” activities, as well as identity theft. Both of these are indication of bad faith, since such practice could seriously harm Complainant’s interests, according to the Complainant.

Please see for instance: WIPO D2014-1387 Tetra Laval Holdings & Finance S.A. v. VistaPrint Technologies Ltd.

RESPONDENT: No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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

In accordance with paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name the Complainant must prove the following:

(i) The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) The Respondent has no rights or legitimate interests in respect of the Domain Name; and

(iii) The Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has shown it owns rights in the ARCELORMITTAL trademark.

Additionally, the Panel finds that the Complainant has established confusing similarity, as the disputed domain name is nearly identical to the trademark, with the exception of one character. The only difference lies in the disputed domain name utilizing a number “1” to substitute the letter “i” contained in the ARCELORMITTAL trademark. This difference is insignificant for purposes of assessing the first element of the Policy.

Accordingly, the Panel finds the Complainant has satisfied the requirements set forth under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

For the Complainant to succeed under the second element of the Policy, it has to show a prima facie case, which consequently shifts the burden of proof to the Respondent (see Berlitz Investment Corp. v. Stefan Tinculescu, WIPO Case No. D2003-0465).

In this case, the Respondent failed to produce allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name.

In this case, the uncontested facts indicate that (a) the Respondent is not affiliated with the Complainant nor is authorized to use the trademark ARCELORMITTAL, and (b) the disputed domain name resolved to a parking page with pay per click links, at the time of the filing of the Complaint. These two facts in conjunction lead the Panel to conclude that the Respondent did not have rights or legitimate interests in the disputed domain name, but still aimed to create an impression of having an association with the Complainant (see Kabushiki Kaisha Toshiba v. Shan Computers, WIPO Case No. D2000-0325).

Accordingly, the Panel finds the Complainant has satisfied the requirements set forth under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Complainant provided evidence that shows a fraudulent use of the disputed domain name through an e-mail meant to appear as having originated from Aditya Mittal, CFO of ArcelorMittal and CEO of ArcelorMittal Europe, with the intention of deriving in unjust enrichment to the benefit of the Respondent. The Panel believes that this conduct embodies the thrust of circumstances exemplified as evidence of bad faith under Paragraph 4(b) of the Policy (see Lockheed Martin Corp. v. Reid Harward, WIPO Case No. D2000-0799).

Accordingly, the Panel finds that the Complainant has satisfied the requirements set forth under paragraph 4(a)(iii) of the Policy.

D. Decision

For the aforementioned reasons, in accordance with Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders that the disputed domain name 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. **ARCELORM1TTAL.COM**: Transferred

PANELLISTS

Name	**Rodolfo Carlos Rivas Rea**

DATE OF PANEL DECISION 2017-06-23

Publish the Decision