Decision for dispute CAC-UDRP-101550

Case number	CAC-UDRP-101550
Time of filing	2017-05-24 09:17:35
Domain names	arcelormittaldobrasil.com

Case administrator

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

Complainant

Organization	ArcelorMittal (Société Anonyme)

Complainant representative

Organization	Nameshield (Anne Morin)

Respondent

Name	ANA LEONI KACHAK GONCALVES

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant relies on its company name, ARCELORMITTAL, and has sufficiently demonstrated to be owner of numerous trademarks, characterized by the distinctive term ARCELORMITTAL, registered worldwide (International word trademark ARCELORMITTAL no. 947686, registered on August 3, 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41, 42).

In Brazil, where the Respondent resides, the Complainant is owner of the following registered trademarks:

- no. 829481591, filed on November 23, 2007 and registered on August 4, 2015 in class 19, claiming priority of the Benelux trademarks application and registration no. 1135957

- no. 829481605, filed on November 23, 2007 and registered on december 23, 2014 in class 21, claiming priority of the Benelux trademarks application and registration no. 1135957

- no. 829481540, filed on November 23, 2007 and registered on december 23, 2014 in class 12, claiming priority of the Benelux trademarks application and registration no. 1135957

- no. 829481621, filed on November 23, 2007 and registered on december 23, 2014 in class 40, claiming priority of the Benelux trademarks application and registration no. 1135957

- no. 829481516, filed on November 23, 2007 and registered on december 23, 2014 in class 6, claiming priority of the Benelux trademarks application and registration no. 1135957.

FACTUAL BACKGROUND

The Complainant asserts and provides evidentiary documentation of the following facts, which are not contested by the Respondent.

The Complainant is a multinational company specialized in steel manufacturing. It 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 domain name <arcelormittaldobrasil.com> was registered on April 8, 2017 and has not been pointed to an active web site.

The Complainant contends that the disputed domain name is confusingly similar to its distinctive and well-known trademark ARCELORMITTAL, since the addition of the geographic term "DO BRASIL" does not distinguish the disputed domain name from its trademarks.

The Complainant submits that the Respondent does not have any rights or legitimate interest in the disputed domain name because:

- the Respondent is not affiliated with the Complainant, nor authorized to use in any way the ARCELORMITTAL trademark;

- the Complainant does not carry out any activity for, nor has any business with the Respondent;

- the Respondent is not commonly known by the disputed domain name, nor has any intellectual property rights regarding the expression ARCELORMITTAL;

- the website in relation to the disputed domain name <arcelormittaldobrasil.com> is inactive since its registration and the Respondent could not have used the domain name without infringing Complainant's trademark rights.

The Complainant also states that the disputed domain name has been registered and is being used in bad faith for the following cumulative circumstances:

- the Complainant's trademark ARCELORMITTAL is well-known worldwide and the Respondent has registered the domain name which is confusingly similar to such marks;

- given the distinctiveness and reputation of the Complainant's trademarks, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's rights in the trademark;

- the website in relation to the disputed domain name is inactive since its registration;

- the domain name has been suspended because the Respondent has not responded to the ICANN verification.

The Complainant, therefore, requests the transfer of the disputed domain name <ARCELORMITTALDOBRASIL.COM>.

PARTIES CONTENTIONS

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

According to paragraph 4(a) of the UDRP Policy the Complainant is required to prove each of the following three elements to obtain the transfer or the revocation of the disputed domain name:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

I. RIGHTS AND IDENTITY OR CONFUSING SIMILARITY

The Complainant has established that it has rights in the trademark ARCELORMITTAL since 2007. The trademarks of the Complainant were registered prior to the registration of the disputed domain name (April 8, 2017) and are valid and well-known worldwide, comprising the territory where the Respondent is located (Brazil).

The Panel finds that the domain name ARCELORMITTALDOBRASIL.COM is confusingly similar to the Complainant's trademark because it wholly incorporates (the distinctive part of) such mark, namely the wording ARCELORMITTAL. The addition of the term "DO" and the geographic term "BRASIL" (meaning together "of Brazil") to the Complainant's registered and well-known mark neither affects the attractive power of such trademark, nor is sufficient to negate the confusingly similarity between the disputed domain name and the Complainant's mark (see paragraph 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition - hereinafter WIPO Overview 3.0). UDRP Panels also agree that the top-level suffix, in this case .com, is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the trademark of the complainant as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0).

Accordingly, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the UDRP Policy.

II. LACK OF RIGHTS OR LEGITIMATE INTERESTS

It is a consensus view of UDRP Panels that the complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the respondent (see paragraph 2.1

of the WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.")

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark.

As per the WHOIS records, confirmed by the Registrar, the Respondent is Ana Leoni Kachak Goncalves and there is no evidence that the Respondent has been commonly known by the domain name ARCELORMITTALDOBRASIL.COM or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The Panel finds that the Complainant has established its prima facie case and the Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name. Thus, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the UDRP Policy.

III. BAD FAITH REGISTRATION AND USE

The Respondent has registered the disputed domain name containing in its entirety the well-known trademark of the Complainant (ARCELORMITTAL) and adding the geographic term "DOBRASIL" (meaning "of Brazil), creating in such way a likelihood of confusion with such mark. Considering the notoriety of the Complainant's activities and its mark worldwide and in particularly in Brazil, where the Respondent is located, it is unlikely that the registration of the disputed domain name may be attributed to a mere chance and not, as is, with a full awareness and intent to exploit the reputation of the Complainant and its mark acquired in these years.

The disputed domain name currently resolves to a webpage which displays that: "You have reached a domain name that is pending ICANN verification. As of January 1, 2014 the Internet Corporation for Assigned Name and Numbers (ICANN) will mandate that all ICANN accredited registrars begin verifying the Registrant WHOIS contact information for all new domain registration and Registrant contact modification. Why this domain has been suspended Email address has not been verified. This domain is a new domain registration and the Registrant email address has not been verified [...]".

There is no evidence that the Registrant has, after the registration of the domain name and before the introduction of this proceeding, taken any active steps to regain the control over the domain name by verifying its contact details with the Registrar/ICANN.

UDRP Panels consider the following factors when applying the passive holding doctrine:

- the degree of distinctiveness or reputation of the complainant’s mark

- the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use

- the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement)

- the implausibility of any good faith use to which the domain name may be put.

Taken into account all circumstances of this case, the Panel finds that it is implausible that there is any legitimate purpose in the registration of the disputed domain name by the Respondent.

The Panel, thus, finds that the Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the UDRP Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITTALDOBRASIL.COM**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2017-06-30

Publish the Decision