Decision for dispute CAC-UDRP-101753

Case number	CAC-UDRP-101753
Time of filing	2017-11-01 10:49:45
Domain names	arcelormittalshow.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	ArcelorMittal

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Colin Turnbull

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant has supplied evidence that it is the owner of the following trademark rights:

International Trade mark No. 947686 ARCELORMITTAL® in Classes 06, 07, 09, 12, 19, 21, 39, 40, 41, and 42, registered on August 3, 2007 (renewed).

The Complainant has supplied evidence that it is the owner of the following domain name rights:

<arcelormittal.com>, registered and used since January 27, 2006.

FACTUAL BACKGROUND

The Complainant 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. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Respondent is an individual based in Canada.

The disputed domain name was registered on October 12, 2017. It currently resolves to a website that displays information in relation with the Complainant.

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

CAC Case n° 101402 CREDIT AGRICOLE SA v. William Philippe: finding that (“the addition of the term <SMS> is only a minor variation and therefore not sufficient to distinguish the disputed domain names <smscreditagricole.com> and <credit-agricole-sms.net> from the Complainant’s trademark CREDIT AGRICOLE; the Complainant’s trademark CREDIT AGRICOLE constitutes the dominant component of the disputed domain names.”).

Use of a disputed domain name to benefit commercially by creating confusion as to the source, sponsorship, affiliation or endorsement of the content therein can constitute bad faith under Policy ¶ 4(b)(iv). See Am. Int’l Group, Inc. v. Busby, FA 156251 (Forum May 30, 2003) (finding that the disputed domain name was registered and used in bad faith where the respondent hosted a website that “duplicated Complainant’s mark and logo, giving every appearance of being associated or affiliated with Complainant’s business . . . to perpetrate a fraud upon individual shareholders who respected the goodwill surrounding the AIG mark”);

see also Xylem Inc. and Xylem IP Holdings LLC v. YinSi BaoHu YiKaiQi, FA1504001612750 (Forum May 13, 2015) (“The Panel agrees that Respondent’s use of the website to display products similar to Complainant’s, imputes intent to attract Internet users for commercial gain, and finds bad faith per Policy ¶ 4(b)(iv).”).

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:
Identical or confusingly similar

The Complainant has provided that it has trademark rights as listed in the "Identification of Rights" section above. The Complainant submits that the disputed domain name is confusingly similar to its trademark, incorporating the Complainant's trademark in its entirety with the addition of the generic term "show", which according to the CAC Case N°101402 CREDIT AGRICOLE SA v. William Philippe, the addition of a generic term associated to a trademark does not create a new or different right to the mark or diminish confusing similarity. The Complainant also contends that the use of the ".com" generic Top Level Domain (gTLD) does not prevent the likelihood of confusion between the disputed domain name and the Complainant’s trademark.

No rights or legitimate interests

The Complainant underlines that a complainant is required to make out prima-facie case that a respondent lacks rights or legitimate interests and the burden of proof then shifts to the respondent to rebut the complainant’s prima-facie case, according to WIPO Case D2003-0455 Croatia Airlines d .d. v. Modern Empire Internet Ltd.

The Complainant argues that the Respondent is not known, has no relationship with the Complainant's business and is not authorized or licensed to use the trademark ARCELORMITTAL®.

The Complainant further states that the Respondent has no rights or legitimate interests in the disputed domain name and has only registered the disputed domain name to create a likelihood of confusion with the Complainant's trademark. The disputed domain name points to a website that displays information in relation with the Complainant, such as the Complainant's logo reproduced in its entirety.

Registered and used in bad faith

The Complainant contends that, given the the notoriety of the Complainant and the use of the disputed domain name, there is no doubt that the Respondent registered the disputed domain name in full knowledge of the Complainant's trademark.

The Complainant states that the use of the disputed domain name demonstrates that the Respondent has registered and is using the disputed domain name in bad faith under Policy, paragraph 4(b)(iv) by attempting to attract Internet traffic and commercially benefit from the goodwill of the ARCELORMITTAL trademark by passing itself off as Complainant, as Am. Int'l Group, Inc. v. Busby FA 156251(Forum May 30, 2003) and Xylem Inc. and Xylem IP Holdings LLC v. YinSi BaoHu YiKaiQi, FA1504001612750 (Forum May 13, 2015) have stated.

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

Paragraph 15 of the UDRP Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, paragraph 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as appropriate.

In this case the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel is therefore obliged to make its decision on the basis of the factual statements contained in the Complaint and the documents made available by the Complainant to support its contentions.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following for a panel to order a transfer of the domain name at issue:

(i) the domain name registered by the respondent is identical or confusingly similar to a trade mark or service mark in which Complainant has rights; and

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

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

Taking each of these issues in turn, the Panel decides as follows:

A. Identical or Confusingly Similar

Based on the evidence put forward by the Complainant, the Panel finds that the Complainant has shown trademark rights in the ARCELORMITTAL sign.

The Panel notes that the disputed domain name incorporates the Complainant's ARCELORMITTAL trademark in its entirety. Moreover, the addition of the descriptive term "show" is not sufficient to diminish or suppress the likelihood of confusion, such as priorly explained by the the Panel in SGS Société Générale de Surveillance S.A. v. Inspectorate Korea WIPO Case No. D2000-0025 in which the Panel has considered that the sole adjunction of a descriptive term within a domain name is not sufficient to exclude any risk of confusion with the Complainant’s rights.

On the basis of these considerations, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights, in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element that the Complainant must prove is that the Respondent has no rights or legitimate interests in respect of the disputed domain name (Policy, paragraph 4(a)(ii)).

Paragraph 4(c) of the Policy sets out various ways in which a respondent may demonstrate rights or legitimate interests in the domain name at issue, as follows:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue."

The Panel has considered the evidence put forward by the Complainant and is of the view that the Complainant has presented a prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name. As a result of its default, the Respondent has failed to rebut that showing, even when given a further opportunity to explain its actions by the Panel as a result of the Panel's Procedural Order.

Considering that the disputed domain name is resolving to a a website that displays information in relation with the Complainant, the Panel finds that the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy.

In light of this fact the Respondent cannot be said to be making a legitimate non-commercial or fair use of the domain name within the meaning of paragraph 4(c)(iii) either.

Finally, no evidence has been supplied that the Respondent is commonly known by the disputed domain name, as per paragraph 4(c)(ii).

Given the findings listed above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The third element that the Complainant must prove on the balance of probabilities states that the disputed domain name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)).

The domain name is used to display information that are in direct competition with the goods and services offered by the Complainant under its ARCELORMITTAL trademark. The Respondents use of the disputed domain does not constitute a bona fide offering of goods and services under paragraph 4(c)(iii) of the Policy.

The Respondent is using the distinctive trademark of the Complainant as part of the disputed domain name, and diplay information using the Complainant's ARCELORMITTAL trademark logo. The Panel therefore finds that the Complainant has shown to the satisfaction of the Panel, that the Respondent must have been aware of the trademark belonging to the Respondent when registering the disputed domain name. The Respondent has therefore registered the disputed domain name in bad faith.

The Respondent is also using the disputed domain name in bad faith pursuant to paragraph 4(b)(iv) of the Policy because the Respondent is commercially gaining from the likelihood of confusion between the Complainant's mark and the products and services advertised on the disputed domain name.

For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITTALSHOW.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2017-12-22

Publish the Decision