Decision for dispute CAC-UDRP-101804

Case number	CAC-UDRP-101804
Time of filing	2017-12-13 11:20:41
Domain names	arce1ormittal.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	ArcelorMittal

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Marjorie Secrest

OTHER LEGAL PROCEEDINGS

The Panel is unaware of other legal proceedings, pending or otherwise, pertaining to the disputed domain name.

IDENTIFICATION OF RIGHTS

The complainant is the proprietor of the company name ARCELORMITTAL, the owner of International Registration No. 947686 ARCELORMITTAL, registered on 3 August 2007, and inter alia of the domain ARCELORMITTAL.COM, registered and in use since 27 January 2006.

FACTUAL BACKGROUND

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

The Complainant claims to be the owner of the international trademark n°947686 ARCELORMITTAL® registered on 3 August 2007. The Complainant also asserts to own an important domain names portfolio, including the same distinctive wording ARCELORMITTAL®, such as the domain name <arcelormittal.com> which has been registered and in use since 27 January 2006.

It is further asserted that the Disputed domain name was registered on 21 November 2017 and that the website in relation with the disputed domain name points to page “404 Page Not Found”.

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 Policy, the Complainant is required to prove each of the following three elements to obtain an order that the Disputed domain name should be transferred or cancelled:

(i) the Disputed 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 Disputed domain name; and

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

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The Disputed domain name is confusingly similar to the Complainant's Trademark, company name and domain <arcelormittal.com>. This finding is based on the well established practice in evaluating the existence of a likelihood of confusion of disregarding the top-level suffix in the domain name (i.e. ".com"), while at the same time holding that in cases of mere typosquatting, where the domain name in question is a simple variation of a famous name, there is a likelihood of confusion due to the confusing similarity of the names.

Such typographical errors can easily be made by internet users, especially when languages which may not be the users' native language are involved. In this case, there is an obvious misspelling of the name, as the Disputed domain name contains a number 1 instead of the letter "l", which is visually highly similar. Decisions pertaining to typographical errors and typosquatting pertaining to the name in question were taken in the following similar UDRP cases:

- WIPO - D2016-1853 - Arcelormittal S.A. v. Cees Willemsen - <arclormittal.com> and <arelormittal.com>;
- CAC - 101265 - Arcelormittal v. Fetty wap LLc Inc - <arcelormitals.com>;
- CAC - 101267 - Arcelormittal v. davd anamo - <arcelormiltal.com>.

Since a number in a word can lead to a case of typosquatting as easily as an additional letter, an omitted letter or even an exchanged letter, as can easily be seen when comparing the Disputed domain name to the earlier right of the Complainant, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the Disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP which has been concluded e.g. in WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.

The Complainant has put forward that the Respondent is not commonly known by the Disputed domain name. Neither is the Respondent in any way related to the Complainant, nor in any way authorized or issued with a license by the Complainant to use the Disputed domain name. This has not been contested by the Respondent. Instead, the Respondent failed to provide any information or evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the Disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

The absence of credible evidence of use or demonstrable preparation of use of the Disputed domain name in connection with a bona fide offering of products or services demonstrates the lack of legitimate interests within the meaning of paragraph 4(a) (ii) of the Policy. This is supported by the finding in WIPO case No. D2000-1164, Boeing Co. v. Bressi, in which the Panel stated that the “Respondent has advanced no basis on which the Panel could conclude that it has a right or legitimate interest in the domain names”.

The Panel therefore also concludes that the Respondent did not establish any right or legitimate interest to the Disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainants have therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the Disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the Disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the Disputed domain name.

On the contrary, the evidence provided by the Complainant shows that the Disputed domain name is not being used at all but is instead inactive. Such inactivity in conjunction with the failure to file a response cannot be sufficient to satisfy the burden of proving that no bad faith is involved.

Since the incorporation of a famous trademark into a domain name coupled with an inactive website may be considered to be evidence of bad faith registration and use, as was held e.g. in WIPO cases D2000-0003 - Telstra Corporation Limited v. Nuclear Marshmallows and D2000-0400 - CBS Broadcasting, Inc. v. Dennis Toeppen, the Complainant puts forward that Respondent has registered the Disputed domain name and is using it in bad faith.

The Panel agrees with this assessment and concludes that the Respondent has registered and is using the Disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainants have therefore also satisfied the requirement under 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. **ARCE1ORMITTAL.COM**: Transferred

PANELLISTS

Name	**Udo Pfleghar**

DATE OF PANEL DECISION 2018-01-23

Publish the Decision