Decision for dispute CAC-UDRP-101870

Case number	CAC-UDRP-101870
Time of filing	2018-02-02 09:38:29
Domain names	arcelurmittal.com

Case administrator

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

Complainant

Organization	ArcelorMittal SA

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	foundationfe

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant provided evidence that it owns a trademark and domain name containing the letters “arcelormittal", <arcelormittal.com>, registered well before the Respondent registered the disputed domain name. Further "ArcelorMittal" is the Company name and well-known.

FACTUAL BACKGROUND

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

The Complainant is a large steel company based in Luxembourg. He is the market leader in steel for use in automotive, construction, household appliances and packaging with operations in more than 60 countries. He holds sizeable captive supplies of raw materials and operates extensive distribution networks. The Company name is ARCELORMITTAL since several years. Therefore the Complainant registrated the <arcelormittal.com> domain name on 27th of 2006 and arcelormittal trademarks as well (word trademark IR No. 947686 in 2007), both active.

The Respondent is a domain holder in the U.S. On January 21, 2018 the Respondent registered the disputed domain name. He linked the disputed domain to a website which is not active. This mislead internet traffic damages the reputation of

Complainant.

The Complainant, represented by the company Nameshield, Ms. Enora Millocheau, France, filed a complaint against the Respondent claiming that the Respondent registered the disputed domain name without rights or legitimate interest and in bad faith. Therefore the registration should be declared abusive and the disputed domain name transferred to the Complainant.

The domain name is a case of Typosquatting. This practical is considered as a hallmark of Policy § 4(a) (iii) bad faith.

See Computerized Sec. Sys., Inc. v. Hu, FA 157321 (Forum June 23, 2003) (finding that the respondent engaged in typosquatting, which is evidence of bad faith registration and use under Policy § 4(a) (iii)).

As prior WIPO UDRP panels have held, the incorporation of a famous trademark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. Please see for instance:
- WIPO - D2000-0003 - Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO - D2000-0400 - CBS Broadcasting, Inc. v. Dennis Toeppen.
Further the Complainant mentioned previous decisions of CAC UDRP Panels,
- CAC - 101265 - Arcelormittal v. Fetty wap LLc Inc - <arcelormitals.com>;
- CAC - 101267 - Arcelormittal v. davd anamo - <arcelormiltal.com>.
Reference in respect of prior rights and likelihood of confusion can be made also to:
- CAC case N° 101036, Boehringer Ingelheim Pharma GmbH & Co. KG vs. SKYRXSHOP <dulcolax.xyz>
- WIPO Case no. D2014-0306 Boehringer Ingelheim Pharma GmbH & Co. KG v. Klinik Sari Padma, BAKTI HUSADA

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

The Panel finds that the disputed domain name is confusingly similar to the trademark, the domain name and Company name of the Complainant. Further the Panel is convinced that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Last but not least the Panel finds that the Respondent acted in bad faith.

It is necessary for the Complainant, if he is to succeed in this administrative proceeding, to prove each of the three elements referred to in paragraph 4(a) of the Policy, namely that:

(i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant proved that the Respondent tried to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. Indeed, the replacement of the letter “O” by the letter “U” in the trademark “ARCELORMITTAL” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and Company name ARCELORMITTAL. The Complainant rightfully contended that the disputed domain name is beyond the vocal "u" in the first part of the trademark identical to the prior trademark of the Complainant. The Complainant also refers to the distinctiveness and reputation of its ARCELORMITTAL trademark. Furthermore, the Complainant contends that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and Complainant, its trademark and its domain names associated.

Moreover, the Panel finds the Complainant contended and provided evidence that the disputed domain name resolves to a website that is used for gaining internet traffic of typing errors of people who seeked to reach Complainant's website. The fact that the Respondent's website is not active does not change the jurisdiction, whatsoever.

The Complainant further rightfully contends that the Respondent has not developed a legitimate use in respect of the disputed domain name. Leading traffic is not considered a bona fide offering of goods or services, nor a legitimate non-commercial or fair use.

The Complainant contends that the Respondent was seeking to use the disputed domain name only to divert consumers to its own website and that the Respondent has no legitimate interests in respect of the disputed domain name.

This makes it highly unlikely that the Respondent had no knowledge of the Complainant's prior trademark rights at the time of registration of the disputed domain name. It is established that a domain name holder has no legitimate interest in the absence of credible evidence of use or demonstrable preparation of use of the domain name in connection with a bona fide offer products or services. It demonstrates a lack of legitimate interests in respect of the domain names (e.g.: WIPO case No. D2000-1164, Boeing Co. v. Bressi: 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”). Thus, in accordance with the foregoing, the Panel contends that Respondent has no right or legitimate interest in respect of the disputed domain name. In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant rightfully contends that the Respondent has used the disputed domain name intentionally to attract visitors for commercial gain by creating confusion with the Complainant’s trademarks, and that the Respondent has used the disputed domain name with that intention, namely in bad faith. This is a clear case of typosquatting, the disputed domain name contains an obvious misspelling of the Complainant’s trademark.

Accordingly, the Panel finds that the disputed domain name was both registered and used in bad faith and that the Complaint succeeds under all three elements of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELURMITTAL.COM**: Transferred

PANELLISTS

Name	**Dr. jur. Harald von Herget**

DATE OF PANEL DECISION 2018-03-18

Publish the Decision