Decision for dispute CAC-UDRP-101902

Case number	CAC-UDRP-101902
Time of filing	2018-03-02 09:14:46
Domain names	arcelomrital.com

Case administrator

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

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Stefanie Escalante

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant is the owner of international trademark Registration No. 947686 for the name ARCELORMITTAL, registered on August 3, 2007.

FACTUAL BACKGROUND

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

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. It operates its business under the name ARCELORMITTAL and is the owner of international trademark Registration No. 947686 for this name dating to August 3, 2007. The Complainant also owns a number of domain names that reflect its trademark including <arcelormittal.com> which was registered and has been in use by the Complainant since 2006.

The disputed domain name was registered on January 31, 2018 and resolves to a parking page with commercial links of the pay-per-click variety.

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

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

(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.

Paragraph 15(a) of the Rules directs the Panel to decide this case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Further, as UDRP proceedings are administrative in nature, the standard of proof is the balance of probabilities (i.e., more likely than not). Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan, WIPO Case No. D2014-2227; LoanDepot.com v. Liu Yuan, FORUM Claim No. FA 1762239.

Confusingly Similarity

The disputed domain name is not identical to the trademark of the Complainant. However, it constitutes a typical example of typo-squatting, that is, a deliberate and minor misspelling which is intended to mimic the kind of errors that Internet users commonly make when typing a term into a browser or search engine. In this case the differences between the <arcelomrital.com> domain name and the Complainant's ARCELORMITTAL trademark are very minor and easily overlooked. The inversion of the letters “r” and “m” and the omission of the letter “t” in the trademark are not sufficient to escape the finding that the domain name is confusingly similar to the trademark. JCDECAUX SA v. Casey Kolp, CAC Case No. 101713: "This is a clear case of typosquatting giving rise to the [JCDECAAUX.COM] disputed domain name's confusing similarity with the Complainant's famous mark" JCDECAUX.“

Therefore the Panel holds that the Complainant has satisfied paragraph 4(a)(i) of the Policy because the disputed domain name is confusingly similar to the trademark of the Complainant.

Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out certain circumstances which, if proven by the evidence presented, may demonstrate a respondent's rights or legitimate interests in respect of a disputed domain name. None of these circumstances apply to the Respondent in the present dispute.

The Panel concludes, on the basis of the Complainant's undisputed contentions, that the Respondent has not made use of the disputed domain name in connection with a bona fide offering of goods or services as noted in paragraph 4(c)(i) of the Policy. The Respondent has not been authorized to use the Complainant's ARCELORMITTAL trademark, either as domain name or in any other way. Rather, the Respondent is using the disputed domain name to resolve to a classic pay-per-click parking page which, in turn, redirects Internet users to a variety of third-party websites that are not associated with the Complainant. Therefore, this Panel concludes that the disputed domain name alludes to the Complainant's ARCELORMITTAL trademark and that the Respondent is using the disputed domain name to seek pay-per-click revenue through those diverted Internet users who are trying to reach the Complainant but, due to the confusing similarity of the disputed domain name with the Complainant's trademark, end up at the Respondent's website instead. Such use of the disputed domain name is not in connection with a bona fide offering of goods or services. Loro Piana S.p.A. v. Y. v. Oostendorp, CAC Case No. 101335: „use of a disputed domain name that copies the complainant's trademark to resolve to a pay-per-click website "cannot be considered a bona fide offering of goods or services....").

Further, with reference to paragraph 4(c)(ii) of the Policy, there is no evidence before this Panel to suggest that the Respondent is commonly known by the disputed domain name or that it has any trademark rights associated with the names "ARCELORMITTAL" or "ARCELOMRITAL".

Finally, it cannot be said that the Respondent has made a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain as noted in paragraph 4(c)(iii) of the Policy. There is no evidence of record to show, and this Panel is not aware of any information to indicate that the word "arcelomrital" has any generic or descriptive meaning. Nor does it appear that the disputed domain name and its resulting pay-per-click website are referring to the Complainant's trademark in any nominative or other classic fair use manner such as for the purpose of commentary, news reporting, grievance, education, and the like.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) and of the Policy and demonstrated that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad Faith Registration and Use:

In order to prevail in a dispute, paragraph 4(a)(iii) of the Policy requires that a Complainant proves that the domain name has been registered and is being used in bad faith.

The Complainant states that it is the largest steel producing company in the world and is the market leader in steel for use in a variety of products and industries. As such, its ARCELORMITTAL trademark is well-known. This fact, combined with the status of the disputed domain name as a typographical variation of the word ARCELORMITTAL leads this Panel to the conclusion that the Respondent registered the disputed domain name with knowledge of the Complainant's trademark. It has been held in many UDRP decisions that such activity is evidence of bad faith domain name registration. Lexar Media, Inc. v. Huang, WIPO Case No. D2004-1039: "Typo squatting has been held under the Policy to be evidence of bad faith registration of a domain name"); Wal-Mart Stores, Inc. v. Longo, WIPO Case No. D2004-0816: "[typo squatting] is presumptive of registration in bad faith".

As for use, the disputed domain name resolves to a classic pay-per-click website with links to various third-party companies who have no relationship to the Complainant. Such activity has routinely been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant's trademark. Arla Foods Amba v. I S / ICS INC, CAC Case No. 101764 in which bad faith is found in a case where "the Disputed domain name is pointing to a pay-per click website using

advertisements and is not used with real content.") The Panel in this case finds that, in accordance with paragraph 4(b)(iv) of the Policy, the disputed domain name has been used in bad faith as it creates a likelihood of confusion with the ARCELORMITTAL trademark and resolves to a website for the commercial gain of either the Respondent or of those entities to whom the pay-per-click links resolve. In Focus Do It All Group v. Athanasios Sermbizis, WIPO Case No. D2000-0923 the Panel found that “[I]t is enough that commercial gain is being sought for someone” for a use to be commercial).

In light of the above, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) and that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELOMRITAL.COM**: Transferred

PANELLISTS

Name	**Steven M. Levy, Esq.**

DATE OF PANEL DECISION 2018-04-07

Publish the Decision