Decision for dispute CAC-UDRP-101913

Case number	CAC-UDRP-101913
Time of filing	2018-03-09 09:01:03
Domain names	workforacelormittal.com

Case administrator

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

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	China Capital

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the holder of trademark rights for the word mark ARCELORMITTAL, registered in numerous jurisdictions, including China (e.g. international registration No. 947686 since August 3, 2007, duly renewed, and covering products in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42).

FACTUAL BACKGROUND

The Complainant, ArcelorMittal S.A., is the world's largest steel producer. The complainant produces and supplies steel for use in the automotive industry, construction, household appliances and packaging with operations in more than 60 countries.

The Complainant is the owner of the registered word mark ARCELORMITTAL in several classes in numerous countries all over the world, including China.

The disputed domain name <workforacelormittal.com> has been registered on February 14, 2018 by the Respondent. The disputed domain name resolves to a parked website comprising pay-per-click links.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been commonly known by the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent knew, or at least should have known, of the existence of the Complainant's trademark and that this constitutes a clear case of typosquatting. The Complainant further contends that the Respondent has intentionally attempted to attract, for commercial gain Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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 Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Confusing similarity of the disputed domain name

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered ARCELORMITTAL trademark, which is used in connection with its business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name incorporates the Complainant's ARCELORMITTAL trademark in its entirety, with the exception of omitting the second letter "r" between the "a" and the "c" and the addition of the non-distinctive prefix "workfor". Omitting the letter "r" from the Complainant's trademark does not significantly affect the appearance or pronunciation of the disputed domain name. This practice is commonly referred to as "typosquatting" and creates virtually identical and/or confusingly similar domain names to the Complainant's trademark (See Mapfre S.A. y Fundación Mapfre v. Josep Sitjar; WIPO Case No. D2011-0692; Compagnie Gervais Danone v. Jose Gregorio Hernandez Quintero, WIPO Case No. D2009-1050; Harrods Limited v. Mike Anderson Consultants, WIPO Case No. D2003-0813 (holding that omitting "s" from a well-known trademark does not diminish similarity)).

Additionally, the addition of the prefix "workfor" does not add to the distinctiveness of the disputed domain name as it corresponds to the non-distinctive words "work for", which relate to recruitment operations.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No legitimate rights

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (See Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that

it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

Paragraph 4(b) of the Policy provides a non-exclusive list of factors, any one of which may demonstrate bad faith. Among these factors demonstrating bad faith registration and use is the use of a domain name to intentionally attempted to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

In the present case, the Respondent is using the disputed domain name to publish a website comprising pay-per-click links. In addition, the Respondent has failed to respond to the Complaint. Furthermore, given the notoriety of the Complainant's trademark, it is inconceivable to this Panel that the Respondent was unaware of the Complainant and its trademark rights when it registered the disputed domain name.

Finally, the Panel holds that by omitting the second letter "r" in the term "ARCELORMITTAL" in the disputed domain name, the Respondent has engaged in a practice commonly referred to as "typosquatting". This also follows from the fact that the Complainant is the holder of the almost identical domain name <workforarcelormittal.com>, which it uses in connection to its recruitment operations.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being 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. **WORKFORACELORMITTAL.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2018-04-19

Publish the Decision