Decision for dispute CAC-UDRP-101955

Case number	CAC-UDRP-101955
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Domain names	arceloramittal.com

Case administrator

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

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	Repossessed by Go Daddy

OTHER LEGAL PROCEEDINGS

None of which the Panel aware.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of International trademark No. 947686 for ARCELORMITTAL, which was registered on August 3, 2007 (“the ARCELORMITTAL trademark”).

FACTUAL BACKGROUND

The Complainant is a international company engaged in steel production and it is the largest steel producing company in the world.

The Complainant is the registered owner of International trademark No. 947686 for ARCELORMITTAL, which was registered on August 3, 2007 (“the ARCELORMITTAL trademark”).

The Complainant is also the owner of several registered domain names that include the ARCELORMITTAL trademark and which it uses in its business, including <arcelormittal.com>.

The Complainant has been concerned about the registration and use by the Respondent of the disputed domain name <arceloramittal.com>.

The disputed domain name was registered by the Respondent on March 7, 2018 and resolves to an internet parking page with commercial links in relation to the Complainant and competitors of the Complainant.

Accordingly, the Complainant has filed this Complaint in which it seeks the transfer of the disputed domain name from the Respondent to itself.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant made the following contentions.

IDENTITY OR CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME WITH THE TRADEMARK

The disputed domain name is confusingly similar to the Complainant's ARCELORMITTAL trademark. The ARCELORMITTAL trademark is included in the disputed domain name in its entirety with only the letter "a" added.

The addition of the letter "a" and the generic Top-Level Domain ("gTLD") suffix ".com" does not change the overall impression of the designation as being connected to the Complainant's ARCELORMITTAL trademark. It also does not prevent the likelihood of confusion between the disputed domain name and the ARCELORMITTAL trademark.

Prior UDRP decisions have confirmed the proposition that slight spelling variations to a trademark do not prevent a finding of confusing similarity.

Thus, the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

RIGHTS AND LEGITIMATE INTERESTS

The Respondent does not have any rights or legitimate interests in the disputed domain name.

The Complainant must first make out a prima facie case that the Respondent lacks rights or legitimate interests. 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 Policy.

The Respondent has no rights or legitimate interests in respect of the disputed domain name and it is not related in any way to the Complainant's business.

The Respondent is not affiliated with the Complainant or authorized by it in any way to use the ARCELORMITTAL trademark.

The website to which the disputed domain name resolves displays commercial links in relation to the Complainant.

The Complainant submits several prior UDRP decisions that support the above contentions.

Accordingly, the Respondent has no rights or legitimate interests in the disputed domain name.

REGISTRATION AND USE IN BAD FAITH

The disputed domain name has been registered and is being used in bad faith. The disputed domain name is confusingly similar to the ARCELORMITTAL trademark. The disputed domain name is a clear case of typosquatting, a hallmark of bad faith.

The disputed domain name points to a parking page with commercial links (“PPC”) in relation to the Complainant and its competitors. Thus, the Complainant contends that the Respondent registered the disputed domain name primarily for the purpose of disrupting the business of a competitor.

Under paragraph 4(b)(iv) of the Policy, bad faith may be shown by evidence that "By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant’s web site 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 Registrant’s web site or location or of a product or service on that web site or location." The facts of the case bring it within that provision.

Accordingly, the Respondent registered and used the disputed domain name in bad faith.

RESPONDENT:
The Respondent did not submit a Response in this proceeding.

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

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”) of the Internet Corporation for Assigned Names and Numbers (“ICANN”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the CAC Supplemental Rules.

A. Administrative compliance

On April 12, 2018 the CAC having conducted its check of the Complaint for administrative compliance pursuant to Paragraph 4 (b) of the Rules, determined that the Complaint be admitted to proceed further in the Administrative Proceeding.

The Panel makes a finding that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B. Substantive matters

Paragraph 15 of the Rules provides that the Panel is to decide the 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 that it deems applicable.

In that regard, the Panel also notes that the onus is on the Complainant to make out its case and past UDRP panels have

consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

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

The Panel will therefore deal with each of these requirements in turn.

A. Identical or Confusingly Similar

The Complainant has adduced evidence that the Panel accepts that it is the registered owner of the ARCELORMITTAL trademark and as such has rights in that trademark.

The Panel next finds that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark for the following reasons:

The disputed domain name includes the entirety of the ARCELORMITTAL trademark and that word is virtually the entirety of the disputed domain name, as only the letter “a” has been added which does not change the substance of the meaning or effect of the disputed domain name.

Accordingly, the disputed domain name would inculcate in the mind of the user the notion that it was an official domain name of the Complainant , that it would lead to the official website of the Complainant and that it dealt with the activities of the Complainant.

It is also now well established that the addition of a generic top level domain, such as “.com” in the present case, cannot negate confusing similarity that is otherwise present, as it is in the present case.

Accordingly, the disputed domain name is confusingly similar to the Complainant’s trademark and the Complainant has thus shown the first of the three elements that it must establish.

B. Rights or Legitimate Interests

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.

But by virtue of paragraph 4(c) of the Policy, it is open to the Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:
(i) before any notice to you [respondent] 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 [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and that when such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name.

That prima facie case is made out from the following considerations.

The evidence of the Complainant is to the effect that the Respondent is not related in any way to the Complainant's business, is not affiliated with the Complainant or authorized by it in any way to use the ARCELORMITTAL trademark and does not carry out any activity for, nor has any business with, the Complainant.

The disputed domain name points to a parking website with commercial links in relation to the Complainant and its competitors. The Panel has examined and followed those commercial links and notes that they invoke the Arcelor Mittal name in various forms and in one particularly brazen example invokes "Arcelor Mittal Steel ", thus asserting that the disputed domain name has led to the provision of that specific brand of steel, whereas, although the site contains references to the Complainant it also carries links to a range of clearly competing companies. Moreover, as the Panel has followed the various links, it finds that they lead to clearly competing steel firms in various overseas countries. It is now well established that such conduct cannot give rise to a right or legitimate interest in a disputed domain name and the Panel so holds in the present proceeding.

These facts give rise to the prima facie case made out by the Complainant.

The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default. Accordingly, the prima facie case has not been rebutted and the Complainant has made out the second of the three elements that it must establish.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith: Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:
(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 the respondent's website or location or of a product or service on the site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the disputed domain name in bad

faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b)(iv) of the Policy and probably within other provisions of paragraph 4(b).

That is so for the following reasons:

First, the Complainant has submitted that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark and that it is a clear case of typosquatting, which is a hallmark of bad faith. The Panel agrees, as those factors show that the Respondent was trying to mislead internet users and give the false impression that it was the Complainant or was acting on behalf of the Complainant and that it was using the Complainant's own domain name. That conduct constitutes bad faith.

Secondly, the disputed domain name points to a parking page with commercial links ("PPC") in relation to the Complainant and its competitors. The Panel has examined and followed those commercial links and notes that they invoke the Arcelor Mittal name in various forms and in one particularly brazen example invoke "Arcelor Mittal Steel ", thus asserting that the disputed domain name has led to the provision of that specific brand of steel, whereas, although the site contains references to the Complainant, it also carries links to a range of clearly competing companies. Moreover, as the Panel has followed the various links, it finds that they lead to clearly competing steel firms in various overseas countries. Thus, the Complainant contends that the Respondent registered the disputed domain name primarily for the purpose of disrupting the business of a competitor. The Panel finds that the intention of the Complainant in both registering and using the disputed domain name in the manner just described must have been to disrupt the Complainant's business and direct potential business to itself or its associates.

Thirdly, under paragraph 4(b)(iv) of the Policy, bad faith may be shown by evidence that "By using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to Registrant's web site 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 Registrant's web site or location or of a product or service on that web site or location." The facts of the case described above clearly bring it within that provision.

Accordingly, the Respondent registered and used the disputed domain name in bad faith.

Finally, in addition and having regard to the totality of the evidence, the Panel finds that, in view of Respondent's registration of the disputed domain name using the ARCELORMITTAL trademark and in view of the conduct that Respondent has engaged in when using the disputed domain name, Respondent registered and used it in bad faith within the generally accepted meaning of that expression.

Such conduct has also been held by many previous UDRP panels to constitute bad faith.

SUMMARY

The Complainant, ArcelorMittal (SA), is a well-known international company engaged in the business of steel production and it is the largest steel producing company in the world. The Complainant is the registered owner of International trademark No. 947686 for ARCELORMITTAL, which was registered on August 3, 2007 ("the ARCELORMITTAL trademark"). It also owns a number of domain names that include the ARCELORMITTAL trademark. The Respondent registered the disputed domain name on March 7, 2018. It resolves to an internet parking page with commercial links in relation to competitors of the Complainant.

The Complainant contended that it has rights in the ARCELORMITTAL trademark, that the disputed domain name is confusingly similar to that trademark, that the Respondent has no rights or legitimate interests in the disputed domain name and that it is being used in bad faith.The Respondent did not reply to the Complainant's claims.

The Panel found that the disputed domain name was confusingly similar to the Complainant's ARCELORMITTAL trademark and that on the evidence submitted, the Respondent had no rights or legitimate interests in the disputed domain name.

Considering the use of the disputed domain name for a website resolving to pay per click sites promoting services competing with those of the Complainant, the Panel found that the disputed domain name was registered and is being used in bad faith.

For the reasons set out in the Decision, the Complaint was accepted and the disputed domain name was ordered to be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORAMITTAL.COM**: Transferred

PANELLISTS

Name	**The Hon. Neil Brown, QC**

DATE OF PANEL DECISION 2018-05-20

Publish the Decision