Decision for dispute CAC-UDRP-101986

Case number	CAC-UDRP-101986
Time of filing	2018-05-04 09:35:06
Domain names	arcelormittalin.com

Case administrator

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

Complainant

Organization	ArcelorMittal SA

Complainant representative

Organization	Nameshield (Daria Baskova)

Respondent

Name	Rajkamal Gupta

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Indian Trade Mark Registration No. 1624297 ARCELORMITTAL for various steel and metal related goods in Nice classes 06,12,21 and 40.

FACTUAL BACKGROUND

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

The Complainant is the largest steel producing company in the world. It creates steel products for use in the automotive industry, constructions industry, household applicances and packaging. It has operations in 60 countries, including India were it has subsidary companies. It also recently announced intentions to expand its operations in India.

The Complainant is the owner of trademarks in numours jurisdictions consisting of, or containing, the words ARCELOR MITTAL. This includes Indian Trade Mark Registration No. 1624297 ARCELORMITTAL for various steel and metal related goods in Nice classes 06,12,21 and 40 which was registered on 23 November 2007.

The Complainant is also the owner of numours domain names containing the words ARCELOR MITTAL. Including arcelormittal.com, which it has held since 27 January 2006.

The Respondent registered the disputed domain name on 12 April 2018. In doing so, he provided his address as being one in India.

The disputed domain name resolves to what appears to be a parking page with pay per click links. None of which appear to refer to the Complainant or the steel and metals industry.

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 lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

1) the domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and
2) the Respondent has no rights or legitimate interests in respect of the domain name; and
3) the domain name has been registered and is being used in bad faith.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

As mentioned above the Complainant asserts it has numerous trademark registrations containing or consisting of the words ARCELOR MITTAL. The Panel notes in particular that the Complainant has evidenced rights in Indian Trade Mark Registration 1624297 ARCELORMITTAL, which predate the registration date of the disputed domain name by over a decade.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Complainant has clearly satisfied such in

relation to the trademark ARCELORMITTAL.

The next question is whether the disputed domain name is confusingly similar to the ARCELORMITTAL trademark.

The Panel disregards the gTLD suffix ".com" for the purpose of this comparison. However the Panel further notes that if such a suffix were to add anything it would only make the disputed domain name more similar to the Complainant's well used <arcelormittal.com> domain name, which has the same suffix.

Further the Panel finds that in circumstances where the Complainant has a trading presence in India and the Respondent claims to be from India the inclusion of the suffix "in" does not diminsh the likelihood of confusion as it is likely to be viewed as falsely indicating a connection with the Complainant's business in the India. Given the global nature of the internet and the fact that persons communicating online are unable to verify each others physical locations other than from information they see or hear on their computers or devices it is likely for internet users to see some elements of domain names that allude to locations, countries or jurisdictions (like "IN" or "EU") as indicating geographic origin. This is indeed the purpose of country code top level domains. Likewise the inclusion of a geographic indicator in a domain name prior to the ".com" gTLD suffix may serve the same purpose and be unlikely to reduce the confusion caused by the additional inclusion of the trademark in the domain name. The Panel refers to the decisions in Disney Enterprises Inc v. Orients Rugs & More /NA, Claim No. FA1404001555495 (FORUM, May 21, 2014) and Donald J. Trump v. Web-adviso, D2010-2220 (WIPO, March 5, 2011) which both similarily disregarded the inclusion of "india" as a geographic indicator in the domain names following well-known trademarks.

The disputed domain name is confusingly similar to the ARCELORMITTAL trademark.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name according to the WHOIS extract is "Rajkamal Gupta", which is known as a male name of Indian origin. This name bears no resemblance to "ARCELORMITTAL". Further, the website to which the disputed domain name resolves is what the panel regards as a standard parking page. It has no content which would indicate any right or legitimate interest in the disputed domain name.

The Respondent has no rights or interests in the disputed domain name.

BAD FAITH

The Panel notes that the domain name directs to what appears to be a parking page with pay per click links. None of these links relate to steel and metals industry, the Complainant or any competitor of the Complainant. Hence on its face the page is a ordinary parking page created by the domain name registrar, GoDaddy. On its face no evidence of bad faith is apparent as the mere generation of revenue from domain name parking activities is not by itself necessarily a bad faith activity (See Fundacao CPqD - Centro de Pesquisa e Desenvolvimento em Telecomunicacoes v. Gary Lam WIPO Case No. D2009-1403).

However, it is not the mere use of a parking page that is of most concern in this matter. It is clear that Arcelor Mittal is a well known mark in many jurisdictions, including the Respondent's home jurisdiction of India. It seems highly unlikely that the Respondent would not have known of such a well known and unique trade mark when he sort to register the disputed domain name. The Panel finds that the Respondent had such prior knowlege at the time of registering the disputed domain name and therefore his only purpose in registering the disputed domain name was to opportunistically profit from such confusing similarity. The Respondent clearly targeted the Complainant's well known domain name for this purpose. Such opportunism has been recognised as bad faith by numerous panels, the Panel refers to the commentary of the learned Gerald M Levine, Domain Name Arbitration, Legal Corner Press, 1st ed. 2015, pp. 258 to 259.

Therefore in consideration of all the circumstances the disputed domain name has been 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. **ARCELORMITTALIN.COM**: Transferred

PANELLISTS

Name	**Mr Andrew Norman Sykes**

DATE OF PANEL DECISION 2018-06-11

Publish the Decision