Decision for dispute CAC-UDRP-101987

Case number	CAC-UDRP-101987
Time of filing	2018-05-04 09:35:53
Domain names	arcelormittal-construction.top

Case administrator

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

Complainant

Organization	ArcelorMittal S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	frank eddy

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant has submitted evidence, which the Panel accepts, showing that it is the registered owner of the following:

- the International trademark "ARCELORMITTAL®" (Registration n°947686) dated August 3, 2007;
- the domain name <arcelormittal.com> dated January 27, 2006 which is connected to the official website of the Complainant.

FACTUAL BACKGROUND

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

PART I

The Complainant, ARCELORMITTAL S.A., operating in more than 60 countries, is the world‘s largest steel producing company and the market leader in steel for use in automotive, construction, household appliances and packaging industries. The Complainant is the owner of the international trademark which includes the same "ARCELORMITTAL" word used in the

Disputed Domain Name. The Disputed Domain Name is confusingly similar to the trademarks in which the Complainant has rights and the addition of the generic terms such as “CONSTRUCTION” does not diminish the confusing similarity.

PART II

The Complainant argues that the Respondent has no rights or legitimate interests in the Disputed Domain Name and that the Complainant has no relationship with Complainant's business and is not authorized or licensed to use the trademark ARCELORMITTAL. The Complainant also asserts that the Respondent is not commonly known by the Disputed Domain Name or using the domain name in connection with a legitimate or fair use.

PART III

The Complainant states that the Disputed Domain Name was registered and is being used in bad faith. The Complainant asserts that the Disputed Domain Name is widely-known and that the Respondent has registered and used the Disputed Domain Name with full knowledge of the Complainant’s trademark ARCELORMITTAL. The Complainant also indicates that the Respondent has registered the Disputed Domain Name in order to create confusion with the Complainant’s well-known trademark and to mislead potential customers of the Complainant.

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 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 this context, the Panel also notes that the burden of proof 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.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:
A. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
B. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
C. The Disputed 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 Policy simply requires the Complainant to demonstrate that the Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of the ARCELORMITTAL trademark.

The Panel finds that the Disputed Domain Name fully incorporates the Complainant's ARCELORMITTAL trademark and that the addition of the generic terms and the ".top" suffix is to be disregarded when determining whether the Disputed Domain Name is confusingly similar to the Complainant's trademark.

In similar UDRP cases (See, e.g., Sanofi-Aventis v. Gideon Kimbrell, WIPO Case No. D2010-1559; Turkcell Iletisim Hizmetleri A.S. v. Vural Kavak, WIPO Case No. D2010-0010; Greenbrier IA, Inc. v. Moniker Privacy Services/Jim Lyons, WIPO Case No. D2010-0017 and Zodiac Marine & Pool, Avon Inflatables Ltd and Zodiac of North America Inc. v. Mr. Tim Green, WIPO Case No. D2010-0024), the respective UDRP panels found that adding descriptive words does not remove the likelihood of confusion between a trademark and a domain name incorporating said trademark. Therefore adding the "CONSTRUCTION" phrase would not remove the identity or confusing similarity. Indeed, the Panel finds that the addition of the "CONSTRUCTION" phrase increases the likelihood of confusion since the Complainant is an active player in the construction industry.

The Panel is of the opinion that the internet users will fall into false impression that the Disputed Domain Name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the Disputed Domain Name is confusingly similar with the Complainant's trademarks. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. NO 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.

It is open to a 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 the respondent of the dispute, the use or making 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) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has have acquired no trademark or service mark rights; or
(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the Disputed Domain Name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed Domain Name. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the Disputed Domain Name.

The Complainant contends that the Respondent has made no use of, or demonstrable preparations to use, the Disputed Domain Name in connection with a bona fide offering of goods or services, is not making a legitimate non-commercial or fair use of the Disputed Domain Name, and is not commonly known under the Disputed Domain Name.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant’s trademarks in the Disputed Domain Name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the Disputed Domain Name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that the Complainant's ARCELORMITTAL trademark used in the Disputed Domain Name has a significant reputation and is of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the ARCELORMITTAL trademark and the associated domain names, the Respondent, was aware of the Complainant and its trademarks at the time of registration of the Disputed Domain Name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the Complainant’s trademark at the time of the registration of the Disputed Domain Name is to be considered an inference of bad faith registration.

In addition, when faced with lack of evidence of actual use of the Disputed Domain Dame, where the Respondent has clearly registered the Disputed Domain Name in bad faith, where the Respondent has not responded to the Complaint or to any of multiple attempted communications and where the Respondent uses the Complainant’s entire trademark in an identical manner in the Disputed Domain Name, the Panel finds that bad faith use can be inferred from the circumstances.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and that the Complainant has established the third element under paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITTAL-CONSTRUCTION.TOP**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2018-06-11

Publish the Decision