Decision for dispute CAC-UDRP-101989

Case number	CAC-UDRP-101989
Time of filing	2018-05-09 09:22:52
Domain names	kryviy-arcelormittal.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	ARCELORMITTAL S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Jeton Heta

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

The Complainant is the owner of International Trademark Registration No. 947686, ARCELORMITTAL, registered on August 9, 2007;

The Complainant is a holder of several domain names, including the domain name <ARCELORMITTAL.COM>, registered on January 27, 2006.

FACTUAL BACKGROUND

The Complainant is a large steel production company that markets steel for use in automotive, construction, household appliance, and the packaging industries in more than 60 countries around the world. The Complainant contends that its trademark ARCELORMITTAL is a well-known and enjoys an excellent reputation worldwide.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:
The Complainant's Ukrainian subsidiary resides in the Ukrainian city of Kryviy Rih and is named "PJSC Arcelormittal Kryvyi Rih". Therefore the Complainant contends that the addition of the geographic term “kryviy” (part of the name of the Ukrainian city Kryviy Rih) and the gTLD to the mark is not sufficient to avoid the likelihood of confusion with the Complainant’s trademark.

The Complainant argues that the Respondent has no legitimate rights or interests in the domain name; the Respondent is not known as the disputed domain name, but rather as “Domains By Proxy, LLC”, and has not acquired any right in the trademark.

The Complainant also asserts that since the Whois information regarding the disputed domain name shows the Respondent's name is not similar to the disputed domain name, the Respondent cannot claim it is known under the disputed domain name.

Currently, the disputed domain name redirects to the Complainant's official website, this, argues the Complainant is a bad faith use and evidence of bad faith registration.

RESPONDENT:
The Respondent did not file a Response.

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

A. Identical or Confusingly Similar
Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.
A registered trademark provides a clear indication that the rights in the trademark belong to its respective owner. The Complainant is the owner of trademark registrations for the mark ARCELORMITTAL. The Complainant's Ukrainian subsidiary is located in the Ukrainian city Kryvit Rih and is named "PJSC "Arcelormittal Kryvyi Rih"".
It is now well established that if the relevant trademark is recognizable within the disputed domain name, the addition of other terms, geographical or other, would not prevent a finding of confusing similarity under the first element (See WIPO Overview 3.0, paragraph 1.8).
The disputed domain name consists of the Complainant's registered trademark in its entirety with a partial addition of the name of the city were its' local subsidiary conducts business and the addition of the gTLD ".com".

This panel finds that the partial geographical term supplement is not sufficient to distinguish the disputed domain name from the trademark of the Complainant.
It is widely established that the addition of the gTLD ".com" to the disputed domain name does not avoid confusing similarity (see Accor v. Noldc Inc. WIPO Case No. D2005-0016; F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., WIPO Case No. D2006-0451, and Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; L'Oréal v Tina Smith, WIPO Case No. 2013-0820; Titoni AG v Runxin Wang, WIPO Case No. D2008-0820; and Alstom v. Itete Peru S.A. WIPO Case No. D2009-0877). Therefore, the gTLD ".com" is without significance in the present case since the use of a TLD is technically required to operate a domain name.
Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainants' trademark.

B. Rights or Legitimate Interests
Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), paragraph 2.1).
In the present case, the Complainant has demonstrated to the Panel that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The panel finds that the Complainant has established a prima facie case in this regard, inter alia, since the Complainant has not licensed or otherwise permitted the Respondent to use its "ARCELORMITTAL" trademark.

The Respondent is not commonly known by the disputed domain name but rather as stated above it is known as "Domains By Proxy, LLC". The Respondent has not submitted a response and did not provide any evidence to show any rights or legitimate interests the disputed domain name that is sufficient to rebut the Complainant's prima facie case.

In the circumstances of this case and in light of the Respondent's use of the disputed domain name in order to redirect to the Complainant's official website, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith
The Complainant must show that the Respondent registered and is using the disputed domain name in bad faith (paragraph 4(a)(iii) of the Policy). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.
The burden placed on the Complainant is to bring evidence showing circumstances that indicate that the Respondent registered and used the disputed domain name in bad faith.
A Panel will look into the totality of the circumstances in each case, and these can include evidence of the degree of distinctiveness or reputation of the mark, the failure of the Respondent to file a response and the implausibility of any good faith use to which the domain name may be put.
To show that the Respondent registered the disputed domain name in bad faith, the Complainant argued that the disputed domain name and the Complainant´s mark are similar, that the Respondent knew of the Respondent's trademark due to the Complainant's trademark and worldwide reputation and intended to take advantage of the Complainant's trademark.
The Complainant has submitted evidence, which shows that the Respondent registered the disputed domain name long after the Complainant registered its trademarks. According to the evidence filed by the Complainant, the Complainant has owned the trademark since the year 2007 while the disputed domain name was registered in April 2018. The Complainant's prior registered trademark is suggestive of the respondent's bad faith (see Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).
As mentioned above, currently, the disputed domain name redirects Internet users to the Complainant's official website. Such redirection is clear evidence that the Respondent was aware of the Complainant and an inference is drawn by the Panel that in the circumstances of this case, the Respondent is targeting the Complainant's trademarks and has therefore acted in bad faith in registering and using the disputed domain name. Moreover, The Respondent may change the redirection of the

disputed domain name to the Complainant's website at will thus diverting Internet traffic from the Complainant to the Respondent. The Panel finds no plausible good faith use the Respondent may have for the disputed domain name when such redirection is performed.

Considering these facts, including the absence of a Response and in view of the facts described above, the Panel finds that the Respondent has registered the disputed domain name in bad faith and has used the disputed domain name to attract Internet users on its website by creating a likelihood of confusion with the Complainant's trademark as to source, affiliation or endorsement, in the meaning of paragraph 4(b)(iv) of the Policy, and thus acted in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **KRYVIY-ARCELORMITTAL.COM**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2018-06-17

Publish the Decision