Decision for dispute CAC-UDRP-102010

Case number	CAC-UDRP-102010
Time of filing	2018-05-21 09:09:47
Domain names	arcelorsmital.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Benoit Gallon

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

Complainant states, and provides evidence to support, that it is the owner of certain trademark registrations that consist of or contain the mark ARCELORMITTAL (the "ARCELORMITTAL Trademark"), including Int'l Reg. No. 947,686 for the mark ARCELORMITTAL (registered August 3, 2007), for use in connection with, inter alia, "common metals and their alloys."

FACTUAL BACKGROUND

Complainant states that it is "the largest steel producing company in the world and is the market leader in steel for use in automotive, construction, household appliances and packaging with operations in more than 60 countries."

The Disputed Domain Name was created on April 20, 2018, and is not being used in connection with an active website.

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the disputed domain name is confusingly similar to the ARCELORMITTAL Trademark because, inter alia, "the addition of the letter 'S' and the omission of the letter 'T' in the trademark

ARCELORMITTAL are not sufficient to escape the finding that the domain name is confusingly similar to the trademark and branded goods ARCELORMITTAL."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "[t]he Respondent is not known as the disputed domain name, but as 'BENOIT GALLON', and has not acquired trademarks mark rights on this term"; and "[n]either licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ARCELORMITTAL, or apply for registration of the disputed domain name <arcelorsmital.com> by the Complainant."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, "this misspelling [of the Disputed Domain Name] was intentionally designed to be confusingly similar with the Complainant's trademarks"; "given the distinctiveness of the Complainant's trademarks and reputation, the Complainant contends that it is inconceivable that the Respondent could have registered the disputed domain name <arcelorsmital.com> without actual knowledge of Complainant's rights in the trademark"; and "incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use."

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i)

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the ARCELORMITTAL Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the ARCELORMITTAL Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "arcelorsmital") because "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." WIPO Overview of WIPO Overview 3.0, section 1.11.1.

Here, the Disputed Domain Name contains the ARCELORMITTAL Trademark with two obvious typographical variations: the addition of a letter "s" and the omission of a letter "t." As stated in WIPO Overview 3.0, section 1.9: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar

to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark."

Accordingly, the Panel finds that Complainant has proven the first element of the UDRP.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant has argued that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "[t]he Respondent is not known as the disputed domain name, but as 'BENOIT GALLON', and has not acquired trademarks mark rights on this term"; and "[n]either licence nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ARCELORMITTAL, or apply for registration of the disputed domain name <arcelorsmital.com> by the Complainant."

WIPO Overview 3.0, section 2.1, states: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element."

The Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has 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 registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the registrant 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 registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant's 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 registrant's website or location or of a product or service on the registrant's website or location.

As set forth in section 3.3 of WIPO Overview 3.0:

"From the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding.

"While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

This section is derived, of course, largely from the landmark decision on passive holding in Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003.

As applied to the instant proceeding, the Panel finds that the ARCELORMITTAL Trademark is highly distinctive; that, Respondent has failed to submit a response; and that it is implausible there would be any good faith use to which the Disputed Domain Name may be put.

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORSMITAL.COM**: Transferred

PANELLISTS

Name	**Douglas M. Isenberg**

DATE OF PANEL DECISION 2018-06-25

Publish the Decision