Decision for dispute CAC-UDRP-102029

Case number	CAC-UDRP-102029
Time of filing	2018-05-28 09:10:55
Domain names	arcelrmittal.com

Case administrator

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

Complainant

Organization	ArcelorMittal S.A.

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	james frank

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of international trade mark no 947686 ARCELORMITTAL registered on August 3, 2007 in Classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 with priority on June 18, 2005. However the Complainant has chosen, as a Mutual Jurisdiction, that one of the Registrar i.e. India, in fact the Registrar is indeed an Indian Company. This means that the above indicated IR does not apply to the Indian Jurisdiction simply because it does not cover this Jurisdiction.

In spite of that the Complainant is quite famous also in India, being Mr. Mittal an Indian famous entrapeneur, and that the Complainant has been used and recognized also in the Indian market.

The Complainant has also an important domain name portfolio including its trademark/tradename ARCELORMITTAL.

FACTUAL BACKGROUND

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

Previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusing similar to the complainant’s trademark. Please see prior UDRP cases:

- WIPO Case No. D2004-0296, Costco Wholesale Corporation v. Yong Li (<coscto.com>);

- WIPO Case No. D2015-0451, Clarins v. "-", Unknown Registrant" / Registration Private, Domains By Proxy, LLC (<calrins.com>);

- WIPO Case No. D2011-1658, Alstom v. Telecom Tech Corp./Private Registration (<asltom.com>).

Furthermore, the Complainant also claims that the disputed domain name is a typosquatted version of the ARCELORMITTAL®. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name. Please see:

- FORUM Case No. 1765498, Spotify AB v. The LINE The Line / The Line ("Complainant contends the <spotfy.com> domain name differs from the SPOTIFY mark only by the omission of the letter "i" in the mark, and is thus a classic case of typosquatting. […] The Panel finds that Respondent's registration of the domain name is typosquatting and indicates it lacks rights and legitimate interests in the domain name per Policy 4(a)(ii).").

- FORUM Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group ("The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy 4(a)(ii).").

Moreover, the disputed domain name is inactive since its registration. Therefore, the Complainant contends that the Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

Please see for instance:

- WIPO Case No. D2000-1164, Boeing Co. v. Bressi: the Panel stated that the "Respondent has advanced no basis on which he could conclude that it has a right or legitimate interest in the domain names";

- FORUM Case No. FA109697, LFP, Inc. v. B & J Props.: the Panel stated that "the respondent cannot simply do nothing and effectively "sit on his rights" for an extended period of time when the respondent might be capable of doing otherwise".

Previous UDRP Panels have seen such actions as evidence of bad faith. Please see for instance:

- WIPO Case No. D2018-0538, Kansas City Steak Company, LLC v. Compsys Domain, Compsys Domain Solutions Private Limited ("This is a clear case of typosquatting. The Respondent has registered the Trade Mark containing a misspelling or homophone of the work "steaks", most likely to divert traffic from the Complainant's website to the Respondent's website. The Panel finds that this constitutes bad faith registration and use under paragraph 4(b)(iv) of the Policy.")

Past panels have confirmed the notoriety of the trademark ARCELORMITTAL® in the following cases:

- CAC Case No. 101908, ARCELORMITTAL v. China Capital ("The Complainant has established that it has rights in the trademark "ArcelorMittal", at least since 2007. The Complainant's trademark was registered prior to the registration of the disputed domain name (February 7, 2018) and is widely well-known.");

- CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd ("The Panel is convinced that the Trademark is highly distinctive and well-established.").

Given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent

has registered and used the domain name with full knowledge of the Complainant's trademark.

Please see for instance WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

Please see for instance:

- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

The Complainant is the result of a merger in 2006 between Arcelor and the Mittal Steel resulting in the world’s largest steel producer. ARCELORMITTAL is therefore the name used for this global operation on the steel world market.

The disputed domain name, registered in 2018, has not been used for an active website since its registration.

The disputed domain name is confusingly similar to the Complainant's mark. Simply deleting the letter 'O' in the trademark ARCELORMITTAL is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark and brand. The gTLD .com does not change the overall impression of the disputed domain name and it is still confusingly similar to the Complainant's mark.” It is a clear typosquatting case.

The Respondent has registered the disputed domain name only in order to create likelihood of confusion with the Complainant's trademark. The Respondent has no legitimate interests on <acelrmittal.com>. He is neither authorised nor was given any licence.

It is in bad faith being the domain name inactive since its registration and being a typo of the famous Companant's name and trademark.

Past panels have confirmed the notoriety of the trademark ARCELORMITTAL.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to an unregistered service mark, trade name 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

The Panel agrees with the Complainant that deleting the letter 'O' is not sufficient to avoid confusing similarity and does not render the disputed domain name sufficiently different to the Complainant’s trademark and tradename .The disputed domain name looks extremely similar to the Complainant's mark and internet users can certainly be misled by the disputed domain name. The addition of the gTLD .com is a functional element of a domain name and does not distinguish the disputed domain name from the Complainant's mark under the Policy. The Panel finds that the disputed domain name is confusingly similar to the Complainant's mark.

The Respondent does not appear to be commonly known by the disputed domain name or 'arccelrnnittal'. This is a clear typo registered to attract users that mispel the Complainant’s real domain name.The Respondent does not appear to have any relationship with the Complainant and has not been authorised by the Complainant to use the Complainant's mark. The disputed domain name has not been put to any use. In the light of the lack of any response from the Respondent the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name is an inactive website and therefore a passive holding is a good evidence together with other elements of the Complainant’s bad faith. It is quite evident that the typodomain name was registered only to disrupt the Complainat’s activities Typosquatting in itself can be bad faith. Passive holding of a domain name containing a famous mark is bad faith and the Respondent has not responded to refute the allegation that this is passive holding. Accordingly the Panel holds that the disputed domain name has been registered and used in bad faith. Given the distinctiveness of the Complainant's trademarks and its reputation, it is reasonable to infer that the Respondent has registered and used the disputed domain name with full knowledge of the Complainant's trademark.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELRMITTAL.COM**: Transferred

PANELLISTS

Name	**Massimo Cimoli**

DATE OF PANEL DECISION 2018-06-28

Publish the Decision