Decision for dispute CAC-UDRP-102084

Case number	CAC-UDRP-102084
Time of filing	2018-07-12 09:25:17
Domain names	arcelormitalsa.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	ArcelorMittal S.A.

Complainant representative

Organization	Nameshield (Daria Baskova)

Respondent

Name	Eco

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

In this proceeding, the Complainant relies on the following trademark:

- ArcelorMittal (word), International Trademark Registration No. 947686, registered on August 3, 2007.

FACTUAL BACKGROUND

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

THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant 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 Complainant is the owner of the international trademark No. 947686 registered on August 3d, 2007 and owns a domain names portfolio.
The disputed domain name was registered on June 22, 2018 and it redirects to the webpage of the official website of the

Complainant’s subsidiary in South Africa.
The Complainant states that the disputed domain name is confusingly similar to its trademark.
According to the Complainant the trademark is misspelled in the disputed domain name and the geographical abbreviation "SA" is added.
The Complainant claims that the omission of the letter “T” in the mark is not sufficient to avoid the likelihood of confusion with the Complainant’s trademark and this represents a clear case of typosquatting, the disputed domain name contains an obvious misspelling of the Complainant’s trademark.

The Complainant contends that the addition of this geographical term in the country where the Complainant has business activities (South Africa) makes the domain name even more confusingly similar to its trademark.
Furthermore, the Complainant claims that the addition of the gTLD “.com” does not change the overall impression of the designation as being connected to the trademark of the Complainant.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not known by the disputed domain name. The Respondent is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.
Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark, or apply for registration of the disputed domain name by the Complainant.
Moreover, the Complainant also claims that the disputed domain name is a typosquatted version of its trademark.
Typosquatting can be evidence a respondent lacks rights and legitimate interests in the domain name.
The disputed domain name redirects to the website of the Complainant’s subsidiary in South Africa without any authorization and the Complainant indicates that the Respondent cannot claim to have rights in a domain name merely by redirecting to one of the Complainant’s web sites.

THE DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant contends that 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.
The Complainant also states that the Respondent was aware of the Complainant’s trademark due to the fact that the disputed domain name redirects to the website of the Complainant’s subsidiary in South Africa. This, in the view of the Complainant, is an indication that the Respondent is acting in bad faith.
Finally, the Complainant claims that the disputed domain name is a typosquatted version of the Complainant’s trademark and this also indicates bad faith.

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

A. Identical or confusingly similar with Complainant's trademark

The Complainant owns the word trademark ArcelorMittal.
As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name incorporates the Complainant's trademark with a small misspelling (omission of the letter "t") plus the addition of the "SA" element.

As stated in WIPO Overview 3.0 "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" (see par. 1.9).

It is also well accepted that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical or otherwise) would not prevent a finding of confusing similarity under the first element (see par. 1.8 of the WIPO Overview 3.0).
In the present case the addition of the SA element (South Africa) does not prevent the confusion as the trademark is recognizable in the disputed domain name.

The suffix <.com> shall be disregarded under the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied (see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284).

The Respondent did not respond.
While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and Vertical Solutions Management, Inc. v. webnet-marketing, inc., FA 95095, National Arbitration Forum).

The Respondent is not known under the disputed domain name, is not related in any way with the Complainant and no evidence is available of any rights or legitimate interests of the Respondent in respect of the disputed domain name.
The disputed domain name is an example of typosquatting and it has been confirmed by previous panels that typosquatting

itself can be the evidence that the Respondent lacks rights and legitimate interests in the disputed domain name (see e.g. CAC Case No. 102083).

The Panel finds that the Complainant has shown a prima facie case that has not been rebutted by the Respondent and satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.
These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.
The Complainant alleges that the disputed domain name is used for redirecting to the Complainant's subsidiary web site in South Africa.
The disputed domain name is not actively used on the date of the decision.

There is a general agreement that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see par. 3.3 of the WIPO Overview 3.0).

One has to look at the circumstances of a case taking into account, in particular, the degree of distinctiveness or reputation of the Complainant's mark, the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use and the implausibility of any good faith use to which the domain name may be put (see e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; CAC Case No. 101691 and CAC Case No. 101640).
The Panel finds that the Complainant's ArcelorMittal trademark has a strong reputation and is highly distinctive. Furthermore, the Complainant has been a frequent target of cybersquatters in the past (see e.g. CAC Case No. 102083; CAC Case No. 102029; CAC Case No. 102008 and CAC Case No. 101983).

All the circumstances indicate that the Respondent was aware of the Complainant and its trademark and the registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third party amounts to registration in bad faith (see CAC Case No. 102043). In this case it is hard, if not impossible, to imagine any good faith use of the disputed domain name by the Respondent.

The fact that the disputed domain name has been used for redirecting to the Complainant's subsidiary site in the past actually supports finding of bad faith in this case.

This clearly demonstrates the Respondent's awareness of the Complainant and its business. Besides, as confirmed by some previous panels such practice indicates bad faith as this registration and use interferes with Complainant's ability to control the use of its own trademarks on the Internet, including choosing whether and how domain names incorporating those trademarks resolve to particular web pages, and raises the specter that Respondent could at some future time cause the domain name to resolve to Respondent's own website or to a competing website (see Ameriquest Mortgage Co. v. Jason Banks, WIPO Case No. D2003-0293; MySpace, Inc. v. Mari Gomez, WIPO Cace No. D2007-1231 and Altavista Co. v. Brunosousa, WIPO Case No. D2002-0109).

Moreover, typosquatting itself can be considered as an additional argument in favor of finding bad faith registration and use ("typosquatting is not only a question of similarity, but can also be an indication of bad faith" – see CAC Case No. 101867).

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITALSA.COM**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2018-08-13

Publish the Decision