Decision for dispute CAC-UDRP-102102

Case number	CAC-UDRP-102102
Time of filing	2018-07-24 10:17:37
Domain names	promosarcelormittalmexico.com

Case administrator

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

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Daria Baskova)

Respondent

Organization	Maxivision

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the record owner of the following registrations for the international trademark "ArcelorMittal" and the Mexican trademark ARCELORMITTAL, inter alia for steel:

Trademark: ArcelorMittal
Registration number: 947686
Classes: 06, 07, 09, 12, 19, 21, 39, 40, 41, 42
Date of registration: 3 August 2007

Trademark: ARCELORMITTAL
Registration number: 1103535
Date of registration: 4 June 2009

Complainant has also registered domain names including the wording ArcelorMittal, e.g. <arcelormittal.com>, created on 27 January 2006.

FACTUAL BACKGROUND

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

As stated by the Complainant and undisputed by the Respondent, Complainant is a company specialized in the production of steel. 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. It holds sizeable captive supplies of raw materials and operates extensive distribution networks. Complainant own numerous trademarks including the international trademark n°947686 (“ArcelorMittal”) and the Mexican trademark n°1103535. Complainant also owns a portfolio of domain names including the same distinctive wording "ArcelorMittal", such as the domain name <arcelormittal.com>.

The disputed domain name was registered on 5 July 2018.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

a. Identity or confusing similarity

The Complainant states that the disputed domain name is confusingly similar to its trademarks.
The trademark ArcelorMittal is included in its entirety with addition of the generic word “promos” and the geographic term “mexico” in the disputed domain name. The addition of the generic term “promos”, which means advertisement, in front of the Complainant’s trademark and the geographic term “mexico” following the trademark is not sufficient to avoid the likelihood of confusion with the trademark of the Complainant.
Moreover, the Complainant has subsidiaries in Mexico. Therefore, the addition of the geographical term "mexico" combined with the trademark in the disputed domain name makes it even more confusingly similar to the trademark ArcelorMittal that covers Mexico.
Furthermore, the Complainant contends the addition of the gTLD “.com” does not change the overall impression of the designation as being connected to the international trademark ArcelorMittal. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademarks and its domain names associated.

b. No rights or legitimate interests of the Respondent

The Complainant contends that the Respondent does not have any rights or legitimate interest in the disputed domain name. The Respondent is not known under the disputed domain name.
The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and it 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 license 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 states that the Respondent is using the disputed domain name to pass off as the Complainant. The disputed domain name resolves to a website containing the trademark of the Complainant and with a similar appearance as the official website of the Complainant, and uses fields to fill in login and password information, which could be used in order to collect personal information of the internet users, Complainant’s clients. Therefore, it cannot be considered as bona fide offering of goods and services or fair use under the Policy.
Based on the above mentioned arguments, the Complainant argues that the Respondent has no rights or legitimate interest in the disputed domain name. He has no relationship with Complainant's business and is not authorized or licensed to use the trademark.

c. Registration of the domain name and use in bad faith

The Complainant's trademark is widely known. Past panels have confirmed the notoriety of the trademarks in the following cases:

- the 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 (7 February 2018) and is widely well-known.");
- the 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 disputed domain name with full knowledge of the Complainant's trademark. Moreover, the Respondent was aware of the existence of the Complainant's trademarks and about the Complainant's presence in Mexico at the time of registration of the disputed domain name. The Respondent is even using the Complainant's trademark on its website. Furthermore, the Complainant also contends that the Respondent, by using the disputed domain name, attempted to attract Internet users to its website for the commercial gain by creating confusion as to the source, sponsorship, affiliation, or endorsement of the website. The Complainant states that the Respondent registered the domain name to create a likelihood of confusion with the Complainant and the Complainant's trademark in order to profit from the Internet users, looking for Complainant's website and finding the Respondent's website. Besides, the Respondent is trying to collect personal information of the Internet users, clients of the Complainant, namely their emails and passwords, through its website.

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

The Panel finds that the disputed domain name is confusingly similar to the Complainant`s trademarks (within the meaning of paragraph 4(a)(i) of the Policy).

The disputed domain name wholly incorporates the trademark "ArcelorMittal". The word "promos" used in the disputed domain name is a generic addition and is not sufficient to avoid the similarity and therefore confusion with the Complainant's trademarks. The same applies to the geographic term "mexico".

No arguments, why the Respondent could have any rights or interests in the disputed domain name are at hand. The Complainant has offered prima facie evidence that the Respondent is in no way related to the disputed domain name. In fact, no contact details of the Respondent with reference to the disputed domain name are existing.

The Complainant contends that the Respondent has made no use of the disputed domain name in connection with a bona

fide offering of goods or services, neither has the Respondent made a legitimate non-commercial or fair use of the disputed domain name nor is the Respondent commonly known under the disputed domain name. In lack of any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Complainant has also proven that the Respondent has engaged in a pattern of conduct with regard to bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). This concerns the registration of the disputed domain name on 5 July 2018 as well as the use of the disputed domain name. The Panel has no reason to disbelieve the Complainant, when it argues that the Respondent knew the Complainant and its presence in Mexico at the time of registration. This applies in particular, as the website where the disputed domain name is resolving to reproduces the trademark of the Complainant. The Panel is convinced that it should give the impression that it is a website of the Complainant.

These facts, including the absence of a response, also confirm that the disputed domain name has been registered to create a likelihood of confusion in order to profit from the internet users, who are looking for the website of the Complainant and find the Respondent's website, instead. Moreover, the Respondent is trying to collect personal information of the internet users, such as their e-mails and passwords, through the website where the disputed domain name resolves to.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PROMOSARCELORMITTALMEXICO.COM**: Transferred

PANELLISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2018-08-29

Publish the Decision