Decision for dispute CAC-UDRP-102138

Case number	CAC-UDRP-102138
Time of filing	2018-08-31 10:08:45
Domain names	arcelormitel.com

Case administrator

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

Complainant

Organization	Arcelormittal (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	workingit

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the international trademark No 947686 ARCELORMITTAL registered on August 3, 2007 and renewed.

FACTUAL BACKGROUND

The Complainant is the largest steel manufacturing 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.

The Complainant is the owner of the international trademark No 947686 ARCELORMITTAL registered on August 3, 2007 and renewed.

The Complainant contends that it also owns an important domain names portfolio, including the same distinctive wording ARCELORMITTAL, such as the domain name <arcelormittal.com> registered and used since January 27, 2006.

The disputed domain name was registered on August 13, 2018. It does not resolve to an active website, but is used to send e-mails to the Complainant's staff impersonating the CFO Mr. A.M.

PARTIES CONTENTIONS

CONTENTIONS OF THE COMPLAINANT

The Complainant states that the disputed domain name is confusingly similar to its international trademark No 947686 ARCELORMITTAL.

Indeed, the replacement of the letter "A" by the letter "E" and the deletion of the letter "T" in the disputed domain name is not sufficient to escape the finding that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark.

This is clear case of typosquatting, since the disputed domain name is composed with an obvious misspelling of the Complainant's trademark: ARCELORMITEL instead of ARCELORMITTAL.

Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant's ARCELORMITTAL trademark.

It relies as well on its domain names composed with the ARCELORMITTAL trademark and produces a Whois extract for <arcelormittal.com>.

Moreover, the term "ARCELORMITTAL" has no other meaning or translation, neither in English nor in French. All the results on Google of this term are related to the Complainant.

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 any license nor any 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 by the Complainant.

The Complainant asserts that Respondent uses the disputed domain name to pass itself off as the Complainant's CFO Mr A; M. and to conduct a phishing scheme. Using the disputed domain name in this manner is neither a bona fide offering of goods or services under §4 (c) (i) of the Policy nor fair use pursuant to §4 (c) (iii) of the Policy.

It further explains that the disputed domain name points to an inactive website since its registration. Therefore, the Complainant contends that 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, except for a phishing scheme. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

The Complainant's trademark ARCELORMITTAL is well-known. Past panels have confirmed the notoriety of the ARCELORMITTAL trademark.

Given the distinctiveness and the well-known character of the Complainant's ARCELORMITTAL trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

Typosquatting is a practice that is considered as bad faith registration in the meaning of §4 (a) (iii) of the Policy.

Moreover, the Complainant's contends that the Respondent was aware of the Complainant's ARCELORMITTAL trademark due to the Respondent's phishing activity and impersonation of the Complainant's CFO, Mr. A. M., in the email exchange with the client's staff.

Furthermore, the Complainant states that the Respondent used the disputed domain name in bad faith. It is well-established that using a domain name for purposes of phishing or other fraudulent activity constitutes solid evidence of bad faith use with intent for commercial gain under paragraph 4 (b) (iv) of the Policy.

Thus, Complainant contends that Respondent has registered the disputed domain name and is using it in bad faith.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

Paragraph 4(a)(i) of the Policy requires the Complainants to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant have rights.

The Complainant has submitted evidence of its registered ARCELORMITTAL trademark right.

The disputed domain name incorporates the Complainant's ARCELORMITTAL trademark by only changing the letter "A" to "E" and deleting the letter "T".

This is a clear typosquatting case that cannot be tolerated.

The Panel finds that the disputed domain name is confusingly similar to the Complainants' ARCELORMITTAL trademark.

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

Pursuant to paragraph 4(c) of the Policy, a Respondent may establish rights to or legitimate interests in the disputed domain name by demonstrating any of the following:

(i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

The Respondent did not respond to the Complainant. Consequently, it did not provide any evidence or allege any circumstance to establish that it has rights or legitimate interests in the disputed domain name.

The Respondent has not been licensed or authorized to use the ARCELORMITTAL trademark or to register the disputed domain name.

The disputed domain name does not resolve to an active website, but is used to send e-mails to the Complainant's staff impersonating the CFO Mr. A.M.

The Complainant contends that it's used for phishing purposes.

What is proved is that the disputed domain name is used to send e-mails impersonating the CFO Mr. A.M. and even reproducing his handwritten signature, asking for the Complainant's staff to complete a task: "As the group CFO of

ArcelorMittal, i have decided to create a private task for every staff working in ArcelorMittal".

This constitutes an identity theft which cannot be a boa fide use of the disputed domain name and which is a finding for lack of rights to or legitimate interests.

In the circumstances of this case, the Panel finds that the Complainant has established a prima facie case of the Respondent's lack of rights or legitimate interests in relation to the disputed domain name, which the Respondent has not rebutted.

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

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by a Panel to be evidence of bad faith registration and use of a domain name. It provides that:

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent has registered or the respondent 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 respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent 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 respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location."

Given the worldwide well-known character of the ARCELORMITTAL trademark, the Panel finds that the Respondent could not ignore the Complainant's rights in the ARCELORMITTAL trademark when it registered the disputed domain name. In this regard, the substitution of the letter "A" by the letter "E", and the deletion of the letter "T", prove that the Respondent targeted the Complainant when it registered the disputed domain name.

The Panel finds that the disputed domain name was registered in bad faith with the Complainant in mind, to disrupt the Complainant's activities, by creating a likelihood of confusion with the Complainant's ARCELORMITTAL trademark.

The Complainant has provided evidence that the Respondent has set up e-mail server for the disputed domain name and has used an address <@arcelormitel.com> to impersonate the company ARCELORMITTAL CFO and to send fraudulent e-mails to the Complainant's staff. This constitutes an identity theft, which is an evidence of bad faith.

For all the above reasons, the Panel is of the opinion that the Respondent's use of the disputed domain name satisfies the requirement of paragraph 4(a)(iii) of the Policy that the disputed domain name was registered and is being used in bad faith by the Respondent.

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 disputed domain name constitutes typosquatting on a worldwide well-known trademark.

Therefore, the disputed domain name is confusingly similar with the Complainant's trademark.

If the disputed domain name does not resolve to an active website, it is being used to create e-mail addresses and send e-mails impersonating the CFO of the Complainant.

This practice constitutes identiy theft.

Under these circumstances, the Panel ordered the transfer.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITEL.COM**: Transferred

PANELLISTS

Name	**Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2018-10-09

Publish the Decision