Decision for dispute CAC-UDRP-102148

Case number	CAC-UDRP-102148
Time of filing	2018-09-06 10:06:29
Domain names	contact-arcelormittal.com

Case administrator

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

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Arcelor Mittal

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant bases its Complaint on the following trademark:

- ARCELORMITTAL, International registration No. 947686, of 3 August, 2007, claiming protection for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42, designating several countries, such as, amongst others the European Union.

FACTUAL BACKGROUND

The Complainant is Arcelormittal S.A., a multinational steel manufacturing corporation, it is the largest steel manufacturing company in the world and 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 operates under the trademark ARCELORMITTAL, registered in several countries worldwide, and owns several “acelormittal“ domain names, among which <arcelormittal.com>, was registered and is used since 27 January 2006.

The disputed domain name has been registered on 25 August 2018 and is inactive since its registration.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant's contentions are the following.

The disputed domain name is confusingly similar to the Complainant's earlier ARCELORMITTAL trademark since it fully includes this trademark preceded by the generic term "contact", which does not prevent confusing similarity. On the contrary, the addition of this term can contribute to confusion when associated with the ARCELORIMTTAL trademark. In that case, Internet users are induced to believe that the disputed domain name originates from the Complainant.

The Respondent lacks rights and legitimate interests in the disputed domain name since the Respondent is not linked to the Complainant, nor has any business relationship with the Complainant. Moreover, the Complainant never granted a license or authorization to the Respondent to make use of its trademark within the disputed domain name. Lastly, the disputed domain name is inactive since its registration, which confirms that the Respondent has no demonstrable plans to use the disputed domain name.

The Respondent registered and is using the disputed domain name in bad faith. The Complainant's trademark ARCELORMITTAL is distinctive and well-known. It is therefore reasonable to infer that the disputed domain name was registered with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain name is inactive since its registration. The incorporation of a well-known trademark coupled with an inactive website may be evidence of bad faith registration and use, as already established in prior UDRP decisions.

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

I. Confusing similarity

The Panel finds that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark due to the fact that the disputed domain name consists of the Complainant's trademark preceded by the generic term "contact", which has no impact in the assessment of confusing similarity. As a matter of fact, the distinctive part of the disputed domain name lies only on the term ARCELORMITTAL, which is identical to the Complainant's mark. Therefore, Internet users facing the disputed domain name are likely to be mislead as to the effective origin of the disputed domain name.

Hence the Panel is satisfied that the Complainant has successfully proved the first condition under the Policy.

II. No rights and legitimate interests

While the overall burden of proof rests on the complainant, it is generally recognized that in order to prove the respondent's lack of rights or legitimate interest in a domain name it is sufficient for the complainant to make out a prima facie case in order to shift the burden of proof to the respondent. This is so because proving a third party's negative fact, such as the respondent's lack of rights or legitimate interest, would otherwise result in an almost impossible task for the complainant.

In the instant case, the Complainant maintains that its ARCERLORMITTAL trademark enjoys reputation and that it never authorized the Respondent to use its trademark within the disputed domain name. According to the Complainant, the Respondent has no business relationship with the Respondent and the latter has not used the disputed domain name in connection with a bona fide offering of goods or services, nor is making a fair and legitimate use of the disputed domain name. Rather, the disputed domain name is inactive since its creation date.

The Panel notes that the Registrar Verification in the case file points out that the contact details provided at the time of the registration of the disputed domain name refer to "Arcelor" as the Respondent's First Name and to "Mittal" as the Respondent's Second Name. Furthermore, the address provided is "Av. Tlahuac GASOLINERIA", where the term "gasolineria" means "fuel station". However, the contact e-mail provided is "gomezremoqlues@gmail.com". In view of the fact that the Respondent uses a "gmail" address, which is the free e-mail service provided by Google, and not an e-mail referred to the Complainant or to one of the Complainant's subsidiaries (such as "@arcerlormittal.com"), and considering that the Respondent failed to file a response in these UDRP proceedings, the Panel is inclined to believe that the contact information provided in the Whois and in particular the name "Arcelor Mittal" as registrant name, is fake, and that the Respondent is not known by the disputed domain name and by the Complainant's trademark ARCERLORMITTAL.

In light of the foregoing, the Panel concludes that the Complainant made out an unrebutted prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Thus, the Panel is satisfied that also the second condition of the Policy is met.

III. Registration and use in bad faith

It is the Panel's opinion that the Respondent was well aware of the Complainant's trademark at the time of the registration of the disputed domain name. "ArcerlorMittal" is certainly not a term that one could register by chance. The term "ArcerlorMittal" is distinctive and unique, and the Respondent had certainly in mind the Complainant's trademark when it registered the disputed domain name. The Respondent failed to prove that it was entitled to the registration of the disputed domain name. Thus, the Panel concludes that the disputed domain name was registered in bad faith.

The disputed domain name is inactive since its registration. Under certain circumstances, the passive holding of a domain name cannot prevent a finding of bad faith. 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 (See paragraph 3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition).

In the instant case all these factors are present: (i) the Complainant's trademark is highly distinctive; (ii) the Respondent failed to submit a response; (iii) the Respondent provided false contact details at the time of the registration of the disputed domain name; and (iv) any good faith use of the disputed domain name would be implausible, considering that the trademark ARCERLORMITTAL is univocally linked to the Complainant and that the Respondent has no business relationship with the Complainant, nor was ever authorised to use the Complainant's trademark in a domain name and in general.

In light of the foregoing, the Panel concludes that the Respondent registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition set forth by the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CONTACT-ARCELORMITTAL.COM**: Transferred

PANELLISTS

Name	**Angelica Lodigiani**

DATE OF PANEL DECISION 2018-10-12

Publish the Decision