Decision for dispute CAC-UDRP-102146

Case number	CAC-UDRP-102146
Time of filing	2018-09-04 10:13:15
Domain names	arcelonrnittal.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Adam New

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks. In particular, ArcelorMittal owns the International Registration No. 947686 ARCELORMITTAL registered on August 3, 2007 for classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42, duly renewed. The above trademark is protected in numerous countries.

FACTUAL BACKGROUND

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

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. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant has demonstrated to be the owner of the trademark ARCELORMITALL registered since August 3, 2007 in numerous countries. The Complainant also proved to be the owner of 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 22, 2018.

The Complainant states that the disputed domain name is confusingly similar to its trademark ARCELORMITTAL. In the Complainant's view the replacement of the letters RM with the letters NRN in <arcelonrnittal.com> is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark ARCELORMITTAL.

The Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant also argues that the Respondent has no relationship with Complainant's business and is not authorized or licensed to use the trademark "ARCELORMITTAL".

The Complainant points out that the disputed domain name is inactive and that it has been used in a phishing scheme.

The Complainant contends that given the distinctiveness of the Complainant's trademark and reputation, the Respondent has surely registered the disputed domain name with full knowledge of the Complainant's trademark. This is also confirmed by the Respondent phishing activity and impersonation of the Complainant in an email exchange with a Complainant's customer.

Finally, the Complainant states that using a domain name for purpose of phishing or other fraudolent activity constitutes solid evidence of bad faith use.

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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

1) The Complainant has established to be the owner of the trademark ARCELORMITTAL at least since August 2007. The Complainant's trademark is registered well before the registration of the disputed domain name (August 22, 2018). The Panel notes that the consensus view in previous UDRP panel decisions is that in determining confusing similarity under paragraph 4(a) of the Policy, the generic Top-Level Domain (“gTLD”) suffix (“.com” in this particular instance) should be disregarded. Therefore the comparison has to be made between the signs ARCELORMITTAL and ARCELONRNITTAL. The only difference between the signs is the replacement of the central letters "RM" in the mark by "NRN" in the disputed domain name. The Panel notes that the signs to be compared are respectively composed of thirteen and fourteen letters and that the differences in relatively long signs are more difficultly detected by the consumers than differences in relatively short signs. The Panel's view is that the disputed domain name contains many recognizable aspects of the mark and, as a consequence, that the signs result to be almost identical aurally and visually notwithstanding the above mentioned replacement. Furthermore the Panel agrees with the Complainant that the disputed domain name represents a clear and intentional misspelling of the previous mark (typosquatting). This in line with previous cases very similar to the one at hand in which the disputed domain name was considered as typosquatting of ARCELORMITTAL (for istance <arcelormitttal.com> in CAC Case No. 102097; <arcealormittal.com> in CAC Case No. 102083; <arcelornmittal.com> in CAC Case No. 102008; <arcelrmittal.com> in CAC Case No. 102029; <arcelomrital.com> in CAC Case No. 101902; <arceclormittal.com> in CAC Case No. 101805). The Complainant therefore succeeds on the first element of the Policy.

2) The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain name as it is not commonly known under the disputed domain name and was never authorized to use it by the Complainant. The Respondent, in the absence of any substantial response, has not shown any facts or element to justify prior rights or legitimate interests in the disputed domain name. The Complainant therefore succeeds also on the second element of the Policy.

3) Respondent's conduct in this case clearly demonstrates bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy. The Respondent introduced a slight deviation into the ARCELORMITTAL trademark by replacing the central letters "RM" in the mark by "NRN" when registering the disputed domain name with the clear intent to confuse ARCELORMITTAL customers. This practice of typosquatting is presumptively bad faith registration of a domain name (See for example Longs Drug Stores California, Inc. v. Shep Dog, WIPO Case No. D2004-1069; Lexar Media, Inc. v. Michael Huang, WIPO Case No. D2004-1039; ESPN, Inc. v. XC2, WIPO Case No.D2005-0444; Amazon.com, Inc. v. Steven Newman a/k/a Jill Wasserstein a/k/a Pluto Newman, WIPO Case No.D2006-0517; Central Purchasing LLC v. FIG Vietnam, WIPO Case No. D2007-0124; Blackrock, Inc. v. Name Redacted, WIPO Case No. D2017-2090). The above finding is clearly confirmed by the circumstance that the Respondent used the disputed domain name to pass itself off as a Complainant's employee in order to receive payments in place of the Complainant by providing fake contact details. In the Panel's view, the circumstance that the disputed domain name has been used to dishonestly impersonate the Complainant is a further evidence of bad faith since it is a clear indication that the Respondent had the Complainant's trademark and company in mind at the time of registration of the disputed domain name (see, National Westminster Bank plc v. Royal Bank of Scotland, WIPO Case No. D2013-0123 and Teva Pharmaceutical Industries Ltd. v. Whois Privacy Protection Service, Inc., CAC Case No. 100921). Therefore the Panel finds that the disputed domain name was registered by the Respondent in bad faith. Finally, by using the disputed domain name as the origin of phishing emails, the Respondent has clearly made an use of the disputed domain name in bad faith by intentionally attempting to obtain, for commercial gain, financial information of a Complainant's customer and by creating, in this manner, a likelihood of confusion between the Complainant's trademark ARCELORMITTAL and the source of the fraudulent emails (see Minerva S.A. v. Whoisguard Protected, Whoisguard, Inc. / Greyhat Services, WIPO Case No. D2016-0385 and Valvoline Licensing and Intellectual Property LLC v. Cimpress Schweiz GmbH, Cimpress Schweiz GmbH - WIPO Case No. D2018-1488). Therefore the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith and that the Complainant succeeds also on the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELONRNITTAL.COM**: Transferred

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2018-10-15

Publish the Decision