Decision for dispute CAC-UDRP-102165

Case number	CAC-UDRP-102165
Time of filing	2018-09-18 09:47:22
Domain names	arcelormnittal.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ARCELORMITTAL S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Pavla WoolDridge

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 International Registration No. 0947686, ARCELORMITTAL, registered on August 3, 2007; US Registration No. 3908649, ARCELORMITTAL, registered on January 18, 2011;

The Complainant is a holder of several domain names, including the domain name <ARCELORMITTAL.COM>, registered on January 27, 2006.

FACTUAL BACKGROUND

The Complainant is a large steel production company that markets steel for use in automotive, construction, household appliance, and the packaging industries in more than 60 countries around the world. The Complainant contends that its trademark ARCELORMITTAL is a well-known and enjoys an excellent reputation worldwide.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its trademark on the basis that the addition of the letter “n” to its trademark, ARCELORMITTAL, and the gTLD “.com” are insufficient to avoid the likelihood of confusion with the Complainant’s trademark. The Complainant also contends that the disputed domain name has wholly incorporated its trademark, thereby establishing confusing similarity under the Uniform Domain Name Dispute Resolution Policy (the “Policy”).

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use its trademark. The disputed domain name also resolves to an inactive website since its registration.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent must have known of the Complainant’s trademark given its reputation. The disputed domain name also resolves to an inactive website since its registration.

RESPONDENT:
The Respondent did not file a Response.

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

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

A registered trademark provides a clear indication that the rights in the trademark belong to its respective owner. The Complainant is the owner of trademark registrations for the mark ARCELORMITTAL.

It is well established that a domain name which consists of a common, obvious or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark for the purposes of the first element (See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition “WIPO Overview 3.0”, paragraph 1.9). An example of such typographical errors includes the addition of other letters (See ARCELORMITTAL vs. VistaPrint Technologies Ltd, CAC case n° 101020; Edmunds.com, Inc. v. Digi Real Estate Foundation, WIPO Case No. D2006-1043). In the present case, the disputed name consists of the Complainant’s registered trademark in its entirety with an addition of a letter “n”, which is an intentional

misspelling that does not avoid confusing similarity to the Complainant's trademark.

It is also widely established that the addition of the gTLD ".com" to the disputed domain name does not avoid confusing similarity (see Accor v. Noldc Inc. WIPO Case No. D2005-0016; F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., WIPO Case No. D2006-0451; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003; L'Oréal v Tina Smith, WIPO Case No. 2013-0820; Titoni AG v Runxin Wang, WIPO Case No. D2008-0820; and Alstom v. Itete Peru S.A. WIPO Case No. D2009-0877). The addition of the gTLD ".com" in the disputed domain name is therefore without significance in the present case since the use of a TLD is technically required to operate a domain name.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to show that the Respondent has no rights or interests in respect of the domain name.

Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name and the burden of production has shifted to the Respondent to show that it has rights or legitimate interests in respect of the disputed domain name.

The Complainant has submitted evidence that it is not affiliated with the Respondent and did not authorize or license the Respondent to use its registered trademark (See OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735). Further, the Respondent is not commonly known by the disputed domain name as it is registered under "Contact Privacy Inc. Customer 1243209605".

The Respondent has not submitted a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name to rebut the Complainant's prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to show that its domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its trademarks. The Complainant's evidence has shown that it owned the trademark since 2007 whereas the disputed domain name was only registered in September 2018. Under these circumstances, the Complainant's prior registered trademark is suggestive of the Respondent's bad faith (see Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

The Complainant has shown that the disputed domain name is inactive and resolves to an inactive page. It is now commonly accepted that the passive holding of a domain name would not prevent a finding of bad faith (see WIPO Overview 3.0, paragraph 3.3). In these circumstances, the panel must examine all circumstances of the case to determine whether the

Respondent is acting in bad faith. Examples of factors that have been considered to be indicative of bad faith include the degree of distinctiveness of the complainant's trademark, the failure of the respondent to file a response, the use of a privacy shield and the implausibility of any good faith use to which the disputed domain name may be put. (see WIPO Overview 3.0, paragraph 3.2; "Dr. Martens" International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc., WIPO Case No. D2017-0246; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003).

In the particular circumstances of the present case, the Complainant had argued that it was impossible for the Respondent to register the disputed domain name without actual knowledge of the Complainant's rights in the ARCELORMITTAL trademark. The Complainant argued that "registration was constitutive of bad faith" because its ARCELORMITTAL trademark is well-known or famous. Even if the Respondent defaulted in this case, panels have held that wholly unsupported self-conclusory allegations may not be sufficient to support a finding of bad faith. If the Complainant claims it has a well-known/famous mark it has the burden of showing the same by evidence. In the present case, no evidence was brought to show that the ARCELORMITTAL trademark is well-known or famous. In addition, and when there is no proof of fame in a trademark, registration on its own is not constitutive of bad faith. Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. (See WIPO Overview 3.0, paragraph 3.1)

Irrespective of the failure of the Complainant to properly argue his case, the Panel is of the opinion that a number of factors indicate bad faith on the part of the Respondent. These include the facts that the ARCELORMITTAL trademark is highly distinctive that the Respondent was using a privacy shield to protect his/her identity and the fact that the Respondent failed to file a response. In addition, the intentional misspelling in the disputed domain name also leads the Panel to believe that the Respondent was targeting the Complainant. Finally, given the Complainant´s highly distinctive trademark it is the Panel's view that there is no plausible good faith use to which the Respondent may put the disputed domain name to.

The Panel is therefore convinced that the overall circumstances of this case suggest that the Respondent's non-use of the disputed domain name is in bad faith.

The Panel therefore finds that the disputed domain name was registered and is being used in bad faith and the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMNITTAL.COM**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2018-10-17

Publish the Decision