Decision for dispute CAC-UDRP-102179

Case number	CAC-UDRP-102179
Time of filing	2018-10-01 11:57:11
Domain names	arcelomittalamericas.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Fundacion Comercio Electronico

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registrant of the international trademark registration No. 947686, "ARCELORMITTAL", registered on August 3, 2007, for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

The Disputed domain name was registered by the Respondent on September 20, 2018.

FACTUAL BACKGROUND

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

The Complainant states that it is the world’s leading steel and mining company and it is present in 60 countries.

The Complainant adds that it supplies steel products in all major markets including automotive, construction, household appliances and packaging.

The Complainant submits that it owns an important domain names portfolio, including the domain name <arcelormittal.com> registered since January 27, 2006.

The Complainant considers that the Disputed domain name is confusingly similar to its distinctive trademark "ARCELORMITTAL".

The Complainant contends that the deletion of the letter "r" and the addition of the geographic term “americas” are not sufficient to avoid the finding that the Disputed domain name is confusingly similar to the trademark.

The Complainant adds 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 asserts that the Respondent is not known as the Disputed domain name.

The Complainant clarifies that it does not carry out any activity for, nor has any business with the Respondent.

The Complainant underlines that neither license nor 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 notes that the Disputed domain name resolves to a parking page with commercial links, some related to the Complainant, therefore it contends that the Respondent is not making a bona fide offering of goods or services by means of the Disputed domain name, or a legitimate non-commercial or fair use of it. The Complainant contends that the Respondent has attempted to attract Internet users for commercial gain to its own website, and that this is an evidence of bad faith.

The Complainant observes that past panels have confirmed the notoriety of the widely known trademark "ARCELORMITTAL".

The Complainant points out that, given the distictiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the Disputed domain name with full knowledge of the Complainant's trademark.

Therefore, the Complainant considers that the Respondent has registered the Disputed domain name and is using it in bad faith.

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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the Disputed domain name, the Complainant has to demonstrate that:

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

(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.

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the Disputed domain name is identical with, or confusingly similar to, the Complainant’s trademark or service mark.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the Disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "ARCELORMITTAL", identified in section "Identification of rights" above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the Disputed domain name itself to the Complainant’s trademark.

The Disputed domain name differs from the Complainant’s trademark "ARCELORMITTAL" only by the deletion of letter "r" after the first part of the domain name (i.e. after "arcelo"), by the addition of the word "americas" at the end of the domain name, and by the use of the top-level domain ".com".

Other panels considered that a misspelling, like the deletion of a letter from a trademark, does not prevent a finding of confusing similarity to the relevant mark for the purpose of paragraph 4(a)(i) of the Policy. This is true also where a geographic identifier is added to a misspelled trademark (see, for example, CAC Case No. 101772). The Panel considers that this reasoning is applicable also to the Disputed domain name.

Moreover, the Panel agrees with the view of other panels which considered that a geographical term, like the term "americas", added to a domain name is usually considered a factor that is likely to lead to web users' confusion (see, for example, CAC Case No. 102166).

Furthermore, it is well established that the top-level domain may typically be considered irrelevant in assessing confusing similarity between a trademark and a domain name (see, for example, WIPO Case No. D2017-0718).

For the above-mentioned reasons, the Panel takes the view that the Disputed domain name is confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the Disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights

or legitimate interests in the Disputed domain name:

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

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [Disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

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

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the Disputed domain name.

In particular, the Complainant states that:

- the Respondent is not commonly known by the Disputed domain name;

- it does not carry out any activity for the Respondent;

- the Respondent does not have any business with the Complainant;

- Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark;

- the Respondent has not been authorized to apply for registration of the Disputed domain name;

- the Disputed domain name redirects to a parking page with commercial links, some of which relate to the Complainant.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the Disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy, or other evidence of rights or legitimate interests in the Disputed domain name.

The Respondent does not appear to be commonly known by the name "arcelomittalamericas" or by a similar name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the Disputed domain name, nor any use in connection with a bona fide offering of goods or services.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the Disputed domain name has been both registered and used in bad faith by the Respondent.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [Disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [Disputed] 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 [Disputed] domain name; or

(ii) [the Respondent] [has] registered the [Disputed] 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 [Disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [Disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site 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] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the Disputed domain name was registered in bad faith and that it has been used in bad faith.

In particular, the Panel accepts the Complainant's unchallenged assertions that the Respondent intentionally registered the Disputed domain name with the misspelling of the Complainant's trademark and the addition of the geographical indication "americas".

Indeed, taking into account the distinctiveness and reputation of the trademark "ARCELORMITTAL", which long predated the Disputed domain name, it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "ARCELORMITTAL" when registering the Disputed domain name. The Respondent should have performed an internet search, aimed at excluding possible conflicts with third party rights. Therefore, the Respondent has failed to carry out such a search and has to be considered responsible for the resulting abusive registration under the concept of willful blindness (see, for example, WIPO Case No. D2018-1182). Consequently, this circumstance is considered by the Panel as evidence of bad faith.

Furthermore, if the Respondent had legitimate purposes in registering and using the Disputed domain name it would have filed a Response in this proceeding.

The Panel also agrees that directing Internet users to a web page containing commercial links in relation to the Complainant, like in the present case, is evidence of use in bad faith (see, for example, WIPO case No. D2017-0890).
The Panel, having taken into account the above-mentioned circumstances, namely the fact that the Disputed domain name is confusingly similar to a well-known trademark, that no Response to the Complaint has been filed and the use of the Disputed domain name in a website containing commercial links in relation to the Complainant, considers that the Disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELOMITTALAMERICAS.COM**: Transferred

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2018-11-03

Publish the Decision