Decision for dispute CAC-UDRP-102172

Case number	CAC-UDRP-102172
Time of filing	2018-09-20 11:14:14
Domain names	arceelormittal.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Jeffrey Lindy

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant adduced evidence showing its ownership of the international trademark No. 947686 ARCELORMITTAL, registered on 3 August 2007. This registration is for goods and services under Classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 under the Nice Classification System. Some countries withheld recognition of the trademark's extension within their jurisdiction to certain classes claimed, but it was recognized for core classes, notably Class 6 for metals and alloys, the area in which the Complainant's brand is best known.

The Complainant also provided evidence that it is the registrant of the ArcelorMittal.com domain name and has been since 2006.

Respondent´s details were furnished by the Case Administrator based on the verification of records performed by the registrar of the disputed domain name, Wild West Domains. The Complainant further adduced evidence showing that the disputed domain name is currently inactive.

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 inautomotive, 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 does not carry out any activity for or have any business with the Respondent, nor is it related in any way with the Respondent. In particular, no licence or authorization has been granted to the Respondent to make any use of the Complainant's trademark or to apply for registration of the disputed domain name -- which incorporates an almost identical name to the trademark -- by the Complainant.

The Complainant asserts that the Respondent is not known by the disputed domain name.

The close similarity of the disputed domain name to the Complainant's trademark represents a typosquatted version of the trademark. Typosquatting is the impermissible practice of registering a domain name in an attempt to take advantage of internet users' typographical errors and can be evidence that a Respondent lacks rights or legitimate interests in the domain name.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Respondent has no rights or legitimate interests in respect of the domain name arceelormittal.com, which both incorporates a rendering of its trademark and is almost identical to its domain name.

This is a clear case of typosquatting. The disputed domain name contains an obvious misspelling of the Complainant's trademark: ARCEELORMITTAL instead of ARCELORMITTAL.

The Complainant relies on findings in its favour in cognate prior UDRP cases regarding slight variations in spelling:
- WIPO Case No. D2016-1853, Arcelormittal S.A. v. Cees Willemsen, <arclormittal.com> and <arelormittal.com>
- CAC Case No. 101265, Arcelormittal v. Fetty wap LLc Inc, <arcelormitals.com>
- CAC Case No. 101267, Arcelormittal v. davd anamo - <arcelormiltal.com>.

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 and thus creating confusion.

It further refers to other cases with different Complainants on typosquatting and that this is an indication that the Respondent's lack rights and legitimate interests, notably:
- FORUM Case No. 1765498, Spotify AB v. The LINE The Line / The Line
- FORUM Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group.

This lack is further supported, the Complainant argues, by additional circumstances also found in other cases, notably:
- WIPO Case No. D2000-1164, Boeing Co. v. Bressi ("the Respondent has advanced no basis on which he could conclude that it has a right or legitimate interest in the domain names".)
- FORUM Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants ("The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use".)

Past panels have moreover acknowledged the notoriety of the trademark ARCELORMITTAL, notably:
- CAC Case No. 101908, ARCELORMITTAL v. China Capital;

- CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd;
- WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell, in which the Panel also found that "it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it."

Since the Respondent is not known by the disputed domain name by comparison with the WHOIS data for it, the Complainant relies on, by way of example, FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> to advance a prima facie case according to the approach adopted in WIPO Case No. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd., whereby the Complainant is excused of any further demonstration of the absence of a legitimate right or interest on the Respondent's part, should the Respondent not itself justify such right or interest.

As to the presence of bad faith, the Complainant invokes in particular:
- FORUM Case No. 157321, Computerized Sec. Sys., Inc. v. Bennie Hu ("The Panel finds that Respondent's registration and use of a domain name that differs from Complainant's mark by only one letter indicates "typosquatting", which is evidence of bad faith registration and use.");
- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

RESPONDENT: 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.

Upon examination of the Case File, the Panel observed that a functioning email address for the Respondent had been determined by the Case Administrator and that other details of the Respondent were sufficiently credible to warrant at least a cursory check in light of the conduct alleged. It also noted that the Complainant had not disclosed having made such inquiries itself. The Panel thus exercised its general powers under Paragraph 10 of the Rules to perform a cursory check of the details.

It immediately found that the postal district given in the United States and the telephone number did not correlate with each other. It also determined that the name given for the Respondent was for a person with offices elsewhere and that the domain name employed for the Respondent's email address generates a WHOIS problem message.

The Panel notified the non-correlation it had ascertained to the parties and the Case Administrator, noting that it considered this result might be material to some of the criteria for decision under the Rules. The Panel hence invited notification if a party or the Case Administrator wished to make a comment. No notification was received.

PRINCIPAL REASONS FOR THE DECISION

Applying the three-part cumulative test that the Complainant must prove it has met under Paragraph 4 of the Policy and noting the absence of a Response by the Respondent, the Panel:

(1) accepts as proven the Complainant's evidence as to the rights it has identified and that the disputed domain name is confusingly similar to the Complainant's trademark by reason of typosquatting through adding the spurious letter "e" to the trademark name;

(2) accepts the Complainant's contention that the Respondent is not known by the disputed domain name and that no relationship exists between the Complainant and the Respondent, so indicating a lack of right or legitimate interest on the Respondent's part as to the disputed domain name according to the evidence available to the Panel and applying the balance of probabilities as the standard of proof; and

(3) according to the same evidence and test as under (2), but also the overwhelming likelihood that the Respondent was aware of the Complainant's well-known brand, concludes that the disputed domain name has been registered and is being used in bad faith.

The Panel therefore upholds the Complaint and transfers the disputed domain name to the Complainant.

In reaching its decision, the Panel found the facts in this proceeding sufficiently compelling to the brief extent these were presented by the Complainant. But it does not agree with the Complainant's argumentation on all counts, in particular as to the need in this case to shift the burden of proof with respect to the Respondent's alleged lack of a right or legitimate interest in the disputed domain name.

The Panel in particular notes that, whereas previous Panels have found it expedient to recognize difficulties of proof that might be encountered in several instances, this rationale will not always necessarily apply. Specifically, the Panel points out that in the present proceeding no difficulty was posed in examining the most basic elements about the Respondent -- namely, the contact details -- in order to ascertain whether the Respondent was real or, as is almost certainly the case, a mere fabrication formed of a combination of fictional details and identity theft.

In such a situation, the underlying rationale of there existing a potentially insuperable difficulty to prove what is within the Respondent's knowledge, which has been taken into account by Panels in such cases as Dow Jones & Company and Dow Jones LP v. The Hephzibah Intro-Net Project Limited, WIPO Case No. D2000-0704, would seem not to apply. Performing pertinent factual investigation is then appropriate in order to meet the general standard of the balance of probabilities rather than relying solely on an expediency that may not always fit the facts or sit easily with what Paragraph 4 of the Policy requires.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCEELORMITTAL.COM**: Transferred

PANELLISTS

Name	**Kevin J. Madders**

DATE OF PANEL DECISION 2018-11-05

Publish the Decision