Decision for dispute CAC-UDRP-102201

Case number	CAC-UDRP-102201
Time of filing	2018-10-26 11:13:59
Domain names	ARCELORMITTALPROMOS.COM

Case administrator

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

Complainant

Organization	ARCELORMITTAL S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Julie levi

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner among others of the international trademark n°947686 ARCELORMITTAL® registered on August 3, 2007 (WIPO).

The Complainant owns an important domain names portfolio, including the same distinctive wording ARCELORMITTAL®, such as the domain name <arcelormittal.com> registered since January 27, 2006 for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

The disputed domain name <arcelormittalpromos.com> was registered on February 10, 2014.

The disputed domain name redirects to an online shop dedicated to the Complainant denominated as ArcelorMittal Personal Shop under the email address: AMorders@progressivepromotions.com.

FACTUAL BACKGROUND

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

The Complainant ARCELORMITTAL S.A. is the largest steel producing company specialized in steel producing 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 as it follows on their website at: www.arcelormittal.com .

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

THE DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE PROTECTED TRADEMARK COMBINED WITH GENERIC TERM IN WHICH THE COMPLAINANT HAS RIGHTS

The disputed domain name <arcelormittalpromos.com> is confusingly similar to the Complainant's trademark ARCELORMITTAL®. The trademark ARCELORMITTAL is associated to the word "Promos".

The Complainant contends that the addition of the generic term "PROMOS" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark ARCELORMITTAL. It does not change the overall impression of the designation as being connected to the Complainant's trademark ARCELORMITTAL. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and the domain names associated.

Moreover, the Complainant contends that the addition of the generic Top-Level Domain suffix ".com" does not change the overall impression of the designation as being connected to the trademark ARCELORMITTAL. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated.

Thus, the Complainant was of the opinion that the disputed domain name <arcelormittalpromos.com> is confusingly similar to Complainant's trademark ARCELORMITTAL. This activity supports a finding of the confusing similarity of the disputed domain name in accordance with paragraph 4(a)(i) of the Policy.

THE RESPONDENT DOES NOT HAVE ANY RIGTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

The Respondent diverted the consumers and concurrently the disputed domain name represents the tarnish of the trade mark of the Complainant.

The Complainant asserts that the Respondent is not known for the disputed domain name nor he has any site connection with the Complainant while the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy

DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH
The disputed domain name has been registered and is being in bad faith by attracting internet users for commercial gain by creating a likelihood of confusion with the Complainant.

The Complainant contends that the disputed domain name <arcelormittalpromos.com> is confusingly similar to its distinctive trademark ARCELORMITTAL.

By reproducing the Complainant's well-known ARCELORMITTAL logo and attempting to offer branded unauthorized goods ARCELORMITTAL, the Respondent intentionally uses the disputed domain name to create a likelihood of confusion with such mark for the purpose of attracting customers to its website. Given the distinctiveness of the Complainant's trademarks and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the

Complainant's trademark.

Thus, Complainant contends that Respondent has registered the disputed domain name <arcelormittalpromos.com> and is still in use. This activity supports a finding of bad faith in accordance with paragraph 4(a)(iii) of the Policy.

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.

PRINCIPAL REASONS FOR THE DECISION

1. Confusingly similar disputed domain name

The Complainant has to establish that the disputed domain name is confusingly similar to the Complainant’s trademark.

The Complainant has proven ownership of its registered trademark.

The confusing similarity is simply a comparison of the disputed domain name itself to the Complainant’s trademark. The disputed domain name differs from the Complainant’s trademark "ARCELORMITTAL" by the addition of the generic term “PROMOS” which is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant nor by the use of the top-level domain ".com". It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated.

It is well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is confusingly similar. Therefore, the top-level domain might be considered irrelevant in assessing confusing similarity between a trademark and a disputed domain name (see, for instance, WIPO Case see WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A).

Furthermore, the Complainant’s rights were confirmed by many other decisions, for example, see WIPO Case No. D2018-0968, ArcelorMittal (SA) v. Rodrigues Carolina, Privacy Limited, <arcelormittel.com> and WIPO Case No. D2017-2291, ArcelorMittal (SA) v. Askia Bonga, <groupe-arcelormittal.com> and WIPO Case No. D2017-2011, ArcelorMittal (SA) v. Nom Anonymisé, <arcelormittal-fr.com> and WIPO Case No. D2016-1853, Arcelormittal S.A. v. Cees Willemsen, <arelormittal.com> and <arclormittal.com>.

The Panel comes to the conclusion that the disputed domain name <arcelormittalpromos.com> is confusingly similar to Complainant’s trademark in accordance with paragraph 4(a)(i) of the Policy.

2. No rights or legitimate interests by using the disputed 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 and that the Respondent diverted the consumers and concurrently the disputed domain name represents the tarnish of the trade mark of the Complainant. The Respondent is not known as the disputed domain name nor he has any site connection with the disputed domain name while the Whois information was not similar to the disputed domain name.

The Panel concluded that the Respondent is not commonly known by the disputed domain name, the Respondent cannot prove any license nor authorization granted to make any use of the Complainant's trademark, the Respondent has not been authorized to apply for registration of the disputed domain name and the disputed domain name redirects to a parking page with commercial links which directly relate to the Complainant while 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.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests or any other evidence of rights or legitimate interests in the Disputed domain name.

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

3. Bad faith by using the disputed domain name

The Complainant contends that the disputed domain has been registered and is being in bad faith by attracting internet users for commercial gain by creating a likelihood of confusion with the Complainant. The Panel assessed the given the distinctiveness of the Complainant's trademarks and reputation and can conclude that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

It is evidenced that the Respondent utilizes an original logo and the same font which are actually identical to Complainant's trademark as well as Complainant's copyrighted images and text in an attempt to pass itself off as Complainant. (see for example American Cheerleader Media, LLC. v. ilir shoshi / cheer, FA 1592319 (Forum, January 20, 2015).

The Panel comes to the conclusion that the Respondent is using the disputed domain name and has registered <arcelormittalpromos.com> in bad faith registration and use in accordance with 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. **ARCELORMITTALPROMOS.COM**: Transferred

PANELLISTS

Name	**JUDr. Vojtěch Trapl**

DATE OF PANEL DECISION 2018-12-10

Publish the Decision