Decision for dispute CAC-UDRP-102212

Case number	CAC-UDRP-102212
Time of filing	2018-10-30 09:24:52
Domain names	arcelormiittals.com

Case administrator

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

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Verne Inc

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name <ARCELORMIITTALS.COM> (the 'Domain Name').

IDENTIFICATION OF RIGHTS

ARCELORMITTAL S.A. (the 'Complainant') is the owner of numerous registered trade marks for ARCELORMITTAL, including registrations in the United States of America in various classes.

FACTUAL BACKGROUND

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

The Complainant is a company specialising in producing steel across the world, and notably in the United States of America. The Complainant refers to their website at www.arcelormittal.com.

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 owns various trade marks which include the words ARCELORMITTAL. The Complainant is also the owner

of many Internet domain names which include the words ARCELORMITTAL.

The Domain Name was registered on was registered on 24 October 2018 and resolves to parked webpage with a link to a webpage advertising services of ‘Zoho Sites’.

The Complainant argues that the Domain Name is confusingly similar to its registered trade marks for ARCELORMITTAL. It points out that the addition of the letters I in the middle of the word MITTAL and the letter S at the end of that word, together with the .COM suffix, are not sufficient to escape the finding by the Panel of confusing similarity.

The Complainant states that this is a clear case of "typosquatting", where the Domain Name is an obvious misspelling of the Complainant's ARCELORMITTAL trade mark. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users’ typographical errors and can be evidence of a respondent's lack of rights and legitimate interests in the Domain Name.

The Complainant has no relationship with the Respondent. The Respondent has no rights or legitimate interests in the Domain Name. They are not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither licence nor authorisation has been granted to the Respondent to make any use of the Complainant’s ARCELORMITTAL trade mark, or to apply for registration of the disputed Domain Name by the Complainant.

Further, the Domain Name resolves to a parked webpage with a link to a webpage advertising services of ‘Zoho Sites’. The Respondent has not made any use of Domain Name since its registration, and the Complainant argues that the Respondent has no demonstrable plan to use the Domain Name. It argues this demonstrates a lack of legitimate interests in respect of the Domain Name.

Accordingly the Complainant contends that the Respondent has no right or legitimate interest in respect of the Domain Name.

Further, the Complainamt argues the Domain Name has been registered and is being used in bad faith.

By registering the misspelling of the ARCELORMITTAL trade mark, the Complainant argues that the Domain Name was intentionally registered to be confusingly similar to the Complainant's trade mark. Given the distinctiveness of the Complainant's trade marks and reputation, it is reasonable to infer that the Respondent has registered the Domain Name with full knowledge of the Complainant's trade mark.

The Complainant refers to WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell “The Panel finds that the trademark ARCELORMITTAL is so well-known internationally for metals and steel production that it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it.”

The Domain name is a case of typosquatting. This is considered as a hallmark of bad faith under the Policy.

The Complainant concludes that the Respondent registered and is using the Domain Name in bad faith, referring to NAF 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.”

Finally, failure to make active use of a disputed domain name is evidence of 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 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 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 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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The Complainant first filed its Complaint in relation to the Domain Name with the Czech Arbitration Court on 26 October 2018. In its complaint the Complainant did not state who the Respondent was due to a privacy shield being in place. However, following a request by the CAC for Registrar Verification, the identity of the registrant was named by the Registrar to be Verne Inc, based in Newcastle, WA, USA.

The Complainant filed an amended complaint and the CAC formally commenced proceedings on 30 October 2018. The Respondent was notified accordingly.

The Respondent failed to submit a Response within the time frame required in this Complaint, or at all, and a Notification of Respondent’s Default was therefore issued by the Czech Arbitration Court on 21 November 2018.

Having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer of Palmer Biggs IP Solicitors as the Panel in these UDRP proceedings.

PRINCIPAL REASONS FOR THE DECISION

IDENTICAL OR CONFUSINGLY SIMILAR

The Domain Name consists of a close misspelling of the Complainant's ARCELORMITTAL trade mark in that there is the addition of the letter I in the middle of the word MITTAL, plus the addition of the letter S at the end of that word. The Domain Name also contains the '.com' suffix.

The Panel does not regard the addition of the letters I and S in the manner stated to sufficiently alter the nature of the Domain Name such that it might avoid a finding of the Domain Name being confusingly similar to the Complainant's ARCELORMITTAL trade mark.

The '.com' suffix may be disregarded when it comes to considering whether a domain name is identical or confusingly similar to a trade mark in which a complainant has rights.

As a result, the Panel concludes that the Domain Name is confusingly similar to a trade mark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The Respondent failed to file an administratively compliant (or any) response. In the circumstances the Panel finds from the facts put forward that:

- The Respondent does not appear to have any trade marks associated with the ARCELORMITTAL trade mark.

- There is no evidence that the Respondent is commonly known by the name ARCELORMITTAL, and the Respondent does not have authorization from the Complainant to use the ARCELORMITTAL trade mark.

- There is no evidence to show the Respondent has used the Domain Name for any bona fide offering of goods or services of its own. The Domain Name does not point to an active website as such, but merely to what appears to be a basic ISP holding page for 'Zoho Sites' website creation, encouraging the registrant to 'Get Started' with building a website.

On the balance of probabilities, and in the absence of any evidence to the contrary (or any administratively compliant response at all) being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii) of the Policy.

REGISTERED AND USED IN BAD FAITH

Paragraph 4(b) of the Policy sets criteria which shall be evidence of the registration and use of a domain name in bad faith including that the Respondent acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, the trade mark owner, for valuable consideration. The panel believes it likely that this was at least one of the reasons behind the Respondent's registration and use of the Domain Name, not least as due to the passive holding of the Domain Name with no real active website.

Alternatively, even if this was not one of the reasons behind the Respondent's registration and use of the Domain Name, the examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. The incorporation of a well known trade mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. This Panel refers to the decision of Telstra Corporation Limited v. Nuclear Marshmallows WIPO (Case No. D2000-0003), which was summarised by the panel in Soda LLC v. SIMPLEDOLLAR.COM (Case No. D2016-0038) as follows:

"The UDRP panel in the [Telstra] decision... found that passive holding of a domain name can constitute use in bad faith… in the present case, no positive action was being taken by the respondent in relation to the domain name and the panel concluded that such non-use constituted bad faith."

On the balance of probabilities, and in the absence of any evidence to the contrary (or any administratively compliant response at all) being put forward by the Respondent, this Panel believes from the facts in this case that the Respondent had the Complainant's ARCELORMITTAL trade mark in mind when registering and using the Domain Name. In the circumstances, the Panel believes therefore it is very likely that the Respondent would have known of the Complainant's ARCELORMITTAL trade mark at the time of registration of the Domain Name.

As such, the Panel finds that the Domain Name was registered and is being used in bad faith within the meaning of 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. **ARCELORMIITTALS.COM**: Transferred

PANELLISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2018-12-10