Decision for dispute CAC-UDRP-102239

Case number	CAC-UDRP-102239
Time of filing	2018-11-28 09:57:42
Domain names	arcelormrittal.com

Case administrator

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

Complainant

Organization	ArcelorMittal (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Grace Tld Ltd

OTHER LEGAL PROCEEDINGS

The Panel is unaware of other legal proceedings, pending or otherwise, which relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of the company name ARCELORMITTAL, the owner of International Registration No. 947686 ARCELORMITTAL, registered on 3 August 2007, and inter alia of the domain <ARCELORMITTAL.COM>, registered and in use since 27 January 2006.

FACTUAL BACKGROUND

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

The Complainant claims to be the owner of the international trademark n°947686 ARCELORMITTAL® registered on 3 August 2007. The Complainant also asserts to own an important domain names portfolio, including the same distinctive wording ARCELORMITTAL, such as the domain name <arcelormittal.com> which has been registered and in use since 27 January 2006.

It is further asserted that the disputed domain name <arcelormrittal.com> was registered on 1 November 2018, and redirects to a parking page with commercial links.

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

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the Disputed domain name should be transferred or cancelled:

(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.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The disputed domain name is confusingly similar to the Complainant's Trademark and company name ARCELORMITTAL, as well as to the Complainant's domain name <arcelormittal.com>. This finding is based on the well established practice in evaluating the existence of a likelihood of confusion of disregarding the top-level suffix in the domain name (i.e. “.com”), while at the same time holding that in cases of mere typo squatting, where the domain name in question is a simple variation of a famous name, there is a likelihood of confusion due to the confusing similarity of the names.

Such typographical errors can easily be made by internet users, especially when languages which may not be the users' native language or names which have no obvious meaning to the users are involved. In this case, there is an obvious misspelling of the name, as the disputed domain name consists of the entire name of the Complainant and merely contains an additional letter "r" in the middle of the word. This is an easy spelling mistake to make, but does not change the overall impression created by the contested domain. Decisions pertaining to typographical errors and typo squatting relating to the name in question were taken in the following similar UDRP cases:

- WIPO - D2016-1853 - Arcelormittal S.A. v. Cees Willemsen - <arclormittal.com> and <arelormittal.com>;
- CAC - 101804, ArcelorMittal (SA) v. Marjorie Secrest <arce1ormittal.com>;

- CAC - 102172, ArcelorMittal (SA) v. Jeffrey Lindy <arceelormittal.com>;
- CAC - 101265 - Arcelormittal v. Fetty wap LLc Inc - <arcelormitals.com>;
- CAC - 101267 - Arcelormittal v. davd anamo - <arcelormiltal.com>.

The disputed domain name <arcelormrittal.com> is confusingly similar to Complainant's trademark ARCELORMITTAL and to the other earlier rights of the Complainant. Therefore, the Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy which has been concluded e.g. in WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.

The Complainant has put forward that the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant, nor in any way authorized or issued with a license by the Complainant to use the disputed domain name. This has not been contested by the Respondent. Instead, the Respondent failed to provide any information or evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

The disputed domain name points to a parking page with commercial links. This is not a bona fide offering of goods or services or legitimate non-commercial or fair use. (See NAF case No. FA 1770024, Samuel J. McRoberts v. DOMAIN ADMINISTRATOR / NAME ADMINISTRATION INC which found that "use of a domain name to redirect Internet users to a site featuring unrelated pay-per-click hyperlinks may not be considered a bona fide offering of goods or services or legitimate non-commercial or fair use" and NAF case No. FA 970871, Vance Int'l, Inc. v. Abend which concluded that the operation of a pay-per-click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate non-commercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees.)

The Panel therefore also concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainants have therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name.

The Complainant's trademark ARCELORMITTAL is widely known. This has been confirmed in at least the following cases:

CAC Case No. 101908, ARCELORMITTAL v. China Capital and CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd.

Given the distinctiveness of the Complainant's trademarks and reputation, it must be inferred that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

In the decision WIPO, Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell, the Panel found 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 disputed domain name is clearly a case of typo squatting. This is a typical case of bad faith under paragraph 4(a) (iii) of the Policy. In the decision in NAF Case No. 157321, Computerized Sec. Sys., Inc. v. Bennie Hu, the Panel held that Respondent's registration and use of a domain name that differs from Complainant's mark by only one letter indicates "typo squatting", which is evidence of bad faith registration and use.

Additionally, the Disputed domain name displays commercial links. It is found that the Respondent is therefore attempting to attract Internet users for commercial gain, which may be seen as further evidence of bad faith. As was held in WIPO Case No. D2018-0564, Dubizzle Limited BVI v. Syed Waqas Baqir: "By allowing the use of pay-per-click links on a website having a confusingly similar domain name to the Complainant's marks, the Respondent must have intended to use the disputed domain name to attract Internet users to its website for commercial gain and such intentional use constitutes bad faith under UDRP paragraph 4(b)."

In Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC, the Panel found that "in that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […]so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith."

The Panel agrees with this assessment and concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement under 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. **ARCELORMRITTAL.COM**: Transferred

PANELLISTS

Name	**Udo Pfleghar**

DATE OF PANEL DECISION 2019-01-20

Publish the Decision