Decision for dispute CAC-UDRP-102319

Case number	CAC-UDRP-102319
Time of filing	2019-01-30 12:59:59
Domain names	arcelormiittall.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Sheila Prince NA

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant, ARCELORMITTAL S.A, is the owner of the French trademark ARCELORMITTAL ® No. 947686, registered August 3, 2007, covering services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

The Complainant also owns the domain name <arcelormittal.com> registered since January 27, 2006.

FACTUAL BACKGROUND

The Complainant is the leader in all major global steel markets including automotive, construction, household appliances and packaging, with leading research and development and technology, sizeable captive supplies of raw materials, and outstanding distribution networks with operations in more than 60 countries.

The Complainant has shown that it owns valid trademark rights in France as well as domain name registration.

The Respondent registered the disputed domain name, <arcelormiittall.com> on January 17, 2019.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name should be transferred because each of the three elements required in paragraph 4(a) of the Policy has been established.

Firstly, the Complainant asserts that the disputed domain name is confusingly similar to its trademark ARCELORMITTAL. Complainant states that the addition of the letter “I” and the letter “L” to the trademark ARCELORMITTAL does not prevent confusing similarity with the trademark and branded goods ARCELORMITTAL. Complainant argues that the obvious misspelling of the trademark is a clear case of typosquatting. Moreover, Complainant states that the gTLD <.com> does not change the overall impression of the designation as being connected to Complainant’s trademark. Furthermore, the Complainant refers to decisions which acknowledged its rights in the sign ARCELORMITTAL. (WIPO Case No. D2018-0968, ArcelorMittal (SA) v. Rodrigues Carolina, Privacy Limited, <arcelormittel.com>; WIPO Case No D2017-2291, ArcelorMittal (SA) v. Askia Bonga <groupe-arcelormittal.com>; WIPO Case No. D2017-2011, ArcelorMittal (SA) v. Nom Anonymisé <arcelormittal-fr.com>; WIPO Case D2016-1853, ArcelorMittal (SA) v. Cees Willemsen <arcelormittal.com> and <arclormittal.com>)

Secondly, the Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain name. The Complainant claims 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 claims that Respondent does not carry out any activity for, nor has any business with the Respondent. Moreover, the Complainant provides a screenshot of the disputed domain name dated January 22, 2019 which shows that the disputed domain name redirects to a parking page featuring several pay-per-click links. The Complainant states that such use of the domain name is not a bona fide offering of goods and services nor is it a legitimate non-commercial or fair use.

Finally, the Complainant states that Respondent has registered the disputed domain name and is using it in bad faith. Complainant argues that the misspelling of the trademark ARCELORMITTAL was intentionally designed to be confusingly similar with Complainant’s trademark. Complainant further argues that the disputed domain name points to a parking page with commercial links related to the Complainant’s activities. Complainant argues that Respondent attempts to attract internet users by creating a likelihood of confusion with the Complainant’s trademark.

RESPONDENT:

The Respondent did not reply to the Complainant’s contentions and is therefore in default.

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

A. Complainant has rights over ARCELORMITTAL

The Complainant has demonstrated that it is the owner of the International trademark ARCELORMITTAL No. 947686, registered on August 3, 2007, duly renewed, covering services in classes 7, 9, 12, 19, 21, 39, 40, 41 and 42. This trademark predates the registration of the disputed domain name for more than a decade.

The disputed domain name incorporates the Complainant's trademark ARCELORMITTAL in its entirety, the sole difference between the two is the addition of the letter "I" and "L". The Panel notes that there is also the addition of the letter "T". The Panel agrees that this addition of letters is not sufficient to prevent the confusing similarity with Complainant's trademark. Moreover, it is a form of typosquatting, where a domain name is confusingly similar to Complainant's trademark so that Internet users who misspell Complainant's trademark when searching for it are diverted to Respondent's website.

Typosquatting was recognized, for instance, in the CAC Case No.102257, Arcelor Mittal S.A v. Jerry murray where the disputed domain name <arcelorrnlttal.com> slightly varied from the trademark ARCELOR MITTAL by the addition of several letters.

In addition, gTLDs – such as <.com> in our case – must not be taken into consideration when assessing the likelihood of confusion since they are only a technical requirement (See e.g. Crédit Agricole S.A. v. Roy M Oishi, CAC case No. 101545).

Consequently, the Panel finds that the disputed domain name is highly similar to the Complainant's trademark and that the Complainant has met its burden of showing that the disputed domain name is confusingly similar to the mark in which the Complainant has valid trademark rights within the meaning of paragraph 4(a)(i) of the Policy.

B. Respondent has no Rights or Legitimate Interests

Complainant contends that the Respondent has no rights or legitimate interests on the disputed domain name. Complainant further states that it does not carry out any activity for, nor has any business with the Respondent.

Complainant also argues that neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ARCELORMITTAL.

It clearly appears from the observations submitted by the Complainant that there is no affiliation between the Complainant and the Respondent and that the Complainant did not authorize the Respondent to use its trademark or to register the disputed domain name.

Moreover, the Complainant provided a screenshot dated January 22, 2019 showing that the disputed domain name resolves to a parking page featuring sponsored links related to the Complainant's field of activity. The Panel agrees that such use is not enough to characterize a bona fide offering of goods and services in relation with the disputed domain name.

Therefore, in the Panel's view, the Complainant has shown a prima face case that the Respondent lacks rights or legitimate interests in the disputed domain name.

For this reason, the burden of proof shifts from the Complainant to the Respondent, who has not answered the complaint. It should be noted that "Lack of any response is another element against Respondent's legitimate use or interest in the dispute domain name" (See e.g. Loro Piana S.p.A. v. Robert Remy, CAC Case No. 101595).

The Complainant has shown to the satisfaction of the Panel that the Respondent has no rights or legitimate interests in the

disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

C. Respondent registered and used the disputed domain name in bad faith

Complainant argues that the misspelling of the trademark ARCELORMITTAL was intentionally designed to be confusingly similar with the Complainant's trademark. Moreover, the disputed domain name points to a parking page with commercial links related to Complainant's activities.

Considering how the disputed domain name is constructed, it seems implausible that the Respondent did not have the Complainant's trademark ARCELORMITTAL in mind when registering the disputed domain name. Indeed, previous panels have acknowledged that Complainant's trademark is widely known (See CAC Case No. 101908, ARCELORMITTAL v. China Capital; CAC Case No. 101667, ARCELORMITTAL V. Robert Rudd.)

Because of Complainant's notoriety and because the Respondent did not contest Complainant's contentions, the Panel believes that the Respondent registered the disputed domain name with the goal that Internet users would believe that the disputed domain name was registered or at least approved by the Complainant.

Therefore, the Panel finds that the disputed domain name was registered in bad faith.

Regarding the use of the disputed domain name in bad faith, the Panel takes note that the website to which the disputed domain name resolves is a parking page carrying sponsored links relating to the Complainant's field of activity, as was shown on the screenshot provided by the Complainant. Previous panels have considered that such use of a domain name demonstrated "some knowledge and an attempt to leverage the reputation of the trademark" (CAC Case No. 102233, Geox S.p.a. v. Jeongyong Cho).

In view of the above, the Complainant has shown to the satisfaction of the Panel, that 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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMIITTALL.COM**: Transferred

PANELLISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2019-03-06

Publish the Decision