Decision for dispute CAC-UDRP-102355

Case number	CAC-UDRP-102355
Time of filing	2019-02-13 10:39:25
Domain names	thearcelormittal.com

Case administrator

Name	Lenka Náhlovská (Case admin)

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	ArcelorMittal

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant is the owner of international trademark Registration No. 947686 for the name ARCELORMITTAL, registered on August 3, 2007.

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 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. It operates its business under the name ARCELORMITTAL and is the owner of international trademark Registration No. 947686 for this name dating to August 3, 2007. The Complainant also owns a number of domain names that reflect its trademark including <arcelormittal.com> which was registered and has been in use by the Complainant since 2006.

The disputed domain name was registered on February 8, 2019 and resolves to a registrar parking page with commercial links of the pay-per-click variety.

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

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

(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.

Paragraph 15(a) of the Rules directs the Panel to decide this case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Further, as UDRP proceedings are administrative in nature, the standard of proof is the balance of probabilities (i.e., more likely than not). Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan, WIPO Case No. D2014-2227; LoanDepot.com v. Liu Yuan, FORUM Claim No. FA 1762239.

Confusing Similarity

The Complainant has established its rights to the ARCELORMITTAL trademark through its submission into evidence of an international trademark registration that covers many countries, as well as through submission of a screenshot of its own www.arcelormittal.com website showing actual use of the trademark. The disputed domain name combines an identical copy of the Complainant's trademark with the generic prefix „the" and the „.com" gTLD. These additions are very minor and do not dispel the confusing similarity between the disputed domain name and the Complainant's trademark. ECCO Sko A/S v. yu haitao, CAC Case No. 100344 (in relation to the domain name theeccoshoes.com, „The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark ‚ECCO' as the mere addition of the article ‚the' and of the descriptive term ‚shoes' is not sufficient to exclude the likelihood of confusion with the Complainant's trademark.")

Therefore the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy because the disputed domain name is confusingly similar to the trademark of the Complainant.

Rights or Legitimate Interests:

Paragraph 4(c) of the Policy sets out certain circumstances which, if proven by the evidence presented, may demonstrate a respondent's rights or legitimate interests in respect of a disputed domain name.

The Panel concludes, on the basis of the Complainant's undisputed contentions, that the Respondent has not made use of the disputed domain name in connection with a bona fide offering of goods or services as noted in paragraph 4(c)(i) of the Policy. The Respondent has not been authorized to use the Complainant's ARCELORMITTAL trademark, either as domain name or in any other way. Rather, the Respondent is using the disputed domain name to resolve to a registrar parking page that contains pay-per-click links which, in turn, redirect Internet users to a variety of third-party websites that are not associated with the Complainant. Therefore, this Panel concludes that the disputed domain name fully incorporates the Complainant's ARCELORMITTAL trademark and that the Respondent is using the disputed domain name to seek pay-per-click revenue through those diverted Internet users who are trying to reach the Complainant but, due to the confusing similarity of the disputed domain name with the Complainant's trademark, end up at the Respondent's website instead. Past decisions under the Policy have held that such use of the disputed domain name is not a bona fide offering of goods or services. See, e.g., Loro Piana S.p.A. v. Y. v. Oostendorp, CAC Case No. 101335: „use of a disputed domain name that copies the complainant's trademark to resolve to a pay-per-click website "cannot be considered a bona fide offering of goods or services....").

Further, as the Respondent has submitted no Reponse nor made any other submission in this case, there is no evidence before this Panel to suggest that the Respondent is commonly known by the disputed domain name or that it has any trademark rights associated with the name "ARCELORMITTAL" under paragraph 4(c)(ii) of the Policy.

Finally, it cannot be said that the Respondent has made a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain as noted in paragraph 4(c)(iii) of the Policy. There is no evidence of record to show, and this Panel is not aware of any information to indicate that the word "arcelormittal" has any generic or descriptive meaning. Nor does it appear that the disputed domain name and its resulting pay-per-click parked website are referring to the Complainant's trademark in any nominative or other classic fair use manner such as for the purpose of commentary, news reporting, grievance, education, or the like.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) and of the Policy and demonstrated that the Respondent has no rights or legitimate interests in the disputed domain name.

Bad Faith Registration and Use:

In order to prevail in a dispute, paragraph 4(a)(iii) of the Policy requires that a Complainant proves that the domain name has both been registered and is being used in bad faith.

The Complainant states that it is the largest steel producing company in the world and is the market leader in steel for use in a variety of products and industries. As such, its ARCELORMITTAL trademark is well-known and has been recognized as such in prior cases brought by the Complainant. See, e.g., ArcelorMittal SA v. Tina Campbell, WIPO Case No. DCO2018-0005 ("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.") This fact, combined with the disputed domain name's use of the coined word ARCELORMITTAL, leads this Panel to the conclusion that the Respondent registered the disputed domain name with knowledge of the Complainant's trademark. It has been held in prior decisions that such activity supports a finding of bad faith domain name registration. 7-Eleven, Inc. v. charles rasputin, FORUM Claim No. FA 1829082 (in relation to the domain name 7elevendelivered.com and others, „Respondent had actual knowledge of Complainant's rights in the 7 ELEVEN mark at the time of registering the infringing domain names. Actual knowledge of a complainant's rights in a mark prior to registering a confusingly similar domain name can evince bad faith under Policy ¶ 4(a)(iii).")

As for use, the Complainant has submitted evidence that the disputed domain name resolves to a registrar parking page with pay-per-click links to various third-party companies who have no relationship to the Complainant and, in some cases, may be its competitors. Such activity has routinely been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant's trademark. Arla Foods Amba v. I S / ICS INC, CAC Case No. 101764 (bad faith is found in a case where "the Disputed domain name is pointing to a pay-per click website using advertisements and is not used with real content.") The Panel in this case finds that, in accordance with paragraph 4(b)(iv) of the Policy, the disputed domain name has been used in bad faith as it creates a likelihood of confusion with the ARCELORMITTAL trademark and resolves to a website for the commercial gain of either the Respondent or of those entities to whom the pay-per-click links resolve. In Focus Do It All Group v. Athanasios Sermbizis, WIPO Case No. D2000-0923 the Panel found that “[I]t is enough that commercial gain is being sought for someone” for a use to be commercial.“

In light of the above, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) and that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **THEARCELORMITTAL.COM**: Transferred

PANELLISTS

Name	**Steven M. Levy, Esq.**

DATE OF PANEL DECISION 2019-03-13

Publish the Decision