Decision for dispute CAC-UDRP-102343

Case number	CAC-UDRP-102343
Time of filing	2019-02-06 13:31:26
Domain names	arcelcmittal.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Karolina Dudek

OTHER LEGAL PROCEEDINGS

The panel is not informed of other legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant, ARCELORMITTAL S.A., is the owner of several trademarks, including the international trademark No. 947686 ARCELORMITTAL registered on August 3rd 2007.

The Complainant also owns an important number of domain names, which include the same distinctive wording ARCELORMITTAL, such as the domain name "arcelormittal.com" registered on January 27th 2006.

FACTUAL BACKGROUND

The Complainant, ARCELORMITTAL S.A., is a company specialized in steel producing (website : <arcelormittal.com>).

It is the largest steel producing company in the world and is the market leader in steel for use in the automotive, construction, household appliances and packaging industries with operations in more than 60 countries. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant is the owner of the international trademark No. 947686 ARCELORMITTAL registered on August 3rd 2007.

The disputed domain name <arcelcmittal.com> was registered on January 31th 2019, and has been inactive since then.

PARTIES CONTENTIONS

No administratively compliant Response has been filed by the Respondent.

RIGHTS

In order to determine whether "ARCELORMITTAL" and the disputed domain name are confusingly similar in the sense of paragraph 4(a)(I) of the Policy, a comparison has to be made between the trademark and the disputed domain name and the likelihood of the Internet user confusion should be determined. It is important to note that "ARCELORMITTAL" is a well-known trademark.

In the present case, the Respondent has only deleted the letter "R" and substituted the letter "O" by the letter "C" in the well-known trademark ARCELORMITTAL, which creates confusion because the public may believe that the domain name belongs to ARCELORMITTAL. This is a case of typosquatting (the disputed domain name contains a misspelling of the Complainant's trademark). Previous panels have found that the slight spelling variations do not prevent a disputed domain name from being confusingly similar to the Complainant's trademark (see CAC Case No. 102212, ArcelorMittal (SA) v. Verne Inc <arcelormiittals.com>).

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

To determine whether the Respondent has rights or legitimate interests in the domain name, the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of proof shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name (Accor v. Eren Atesmen, WIPO D2009-0701; Malayan Banking Berhad v. Beauty, Success & Truth International, WIPO D2008-1393).

The Complainant asserts that the Respondent is not affiliated with him and is not authorized by him in any way, and he notes that the disputed domain name is a typosquatted version of the trademark ARCELORMITTAL. Typosquatting can be evidence that a respondent lacks rights and legitimate interest in the domain name (FORUM Case No. 1765498, Spotify AB v. The LINE The Line/ The Line).

Furthermore, the disputed domain name is inactive and the Complainant therefore contends that the Respondent did not make any use of the disputed domain name since its registration, thereby demonstrating that the Respondent has no demonstrable plan to use the disputed domain name.

Based on these findings, it prima facie appears that the Respondent lacks rights or legitimate interests.

Paragraph 4(c) of the Policy provides that the following circumstances can demonstrate rights or legitimate interests in the domain name for the purpose of paragraph 4(a)(ii):
(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
(ii) you (as an individual, business, or other organisation) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or tarnish the trademark or service mark at issue.

The Panel is of the opinion that these conditions have not been met in the present case.

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

1. THE DOMAIN NAME WAS REGISTERED IN BAD FAITH

The Respondent has never been authorized by the Complainant to use the “ARCELORMITAL” trademarks nor to register the disputed domain name. The Respondent seems to have registered the disputed domain name in the sole purpose of attracting more people to its website, with full knowledge of the Complainant's trademark which is well known.

2. THE DOMAIN NAME IS BEING USED IN BAD FAITH

Firstly, the Complainant states that the misspelling of the trademark "ARCELORMITTAL" was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith (FORUM Case No. 157321, Computerized Sec. Sys., Inc. v. Bennie Hu).

Secondly, the disputed domain name is inactive. The Complainant argues that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate.

Finally, the Respondent has failed to respond to the Complainant's complaint. It has been mentioned in earlier cases that the failure of a respondent to respond to a UDPR complaint can be relevant in a finding of bad faith, (e.g., WIPO Case No. D2000-1623, News Group Newspapers Limited and News Network Limited v. Momm Amed Ia).

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

For the abovementioned reasons, it appears to the Panel that the Respondent has registered and used a domain name that is confusingly similar to the Complainant’s trademarks, in which the Respondent has no rights or legitimate interest and which is registered and used in bad faith.

Previous panels have also found that the slight spelling variations does not prevent a disputed domain name from being confusing similar to the Complainant’s trademark.

- CAC Case No. 102212, ArcelorMittal (SA) v. Verne Inc <arcelormiittals.com>;
- CAC Case No. 102180, ArcelorMittal (SA) v. stave co ltd <arcelorrnittals.com>;
- CAC Case No. 102163, ARCELORMITTAL S.A. v. Jean Lemelin <arcelorrnittel.com>.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELCMITTAL.COM**: Transferred

PANELLISTS

Name	Tom Joris Heremans

DATE OF PANEL DECISION 2019-03-19

Publish the Decision