Decision for dispute CAC-UDRP-102346

Case number	CAC-UDRP-102346
Time of filing	2019-02-08 11:35:23
Domain names	acelormitall.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Sani Cermaic

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of International trademark no. 947686 ArcelorMittal registered on August 3, 2007.

FACTUAL BACKGROUND

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

It results from the Complainant's undisputed allegations that it is the largest steel producing company in the world and the market leader in steel for use in automotive, construction, household appliances and packaging with operations in more than 60 countries. It is also the owner of the domain name <arcelormittal.com> created on January 27, 2006.
The Complainant contends its trademark ARCELORMITTAL is widely known. Past panels have confirmed the notoriety of the trademark ARCELORMITTAL (CAC Case No. 101908, ArcelorMittal v. China Capital; CAC Case No. 101667, ArcelorMittal v. Robert Rudd).

The disputed domain name <acelormitall.com> was registered on February 3, 2019 and resolves to an inactive webpage.

The Complainant further contends that the Respondent used the disputed domain name to pass itself off as a Complainant's employee to conduct a phishing scheme.

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

1. The Panel finds that the disputed domain name <acelormitall.com> is confusingly similar to the Complainant's trademark. In the case at issue the Complainant's registered trademark "ArcelorMittal" is almost fully included in the disputed domain name.
On this regard, it is the view of this Panel that the deletion of the consonant "r" between the letters "a" and "c" and the deletion of the consonant "t" between the letters "i" and "t" and the addition of the consonant "l" at the end of the entire word result to be a common, obvious or intentional misspelling of Complainant's trademark. Thus, the disputed domain name contains sufficiently recognizable aspects of the relevant mark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 1.9.

2. In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.
In particular, the Respondent is not affiliated with nor authorized by the Complainant in any way, and he is not related in any way to the Complainant's business. In addition, the Respondent is not commonly known by the disputed domain name. Finally, the website to which the disputed domain name resolved is an inactive webpage and the Complainant provided evidence that the Respondent used the disputed domain name to pass itself off as a Complainant's employee to conduct a phishing scheme. Such use can neither be considered as bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0") at point 2.13: "Panels have categorically held that the use of a domain name for illegal activity (e.g. the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent".

3. It is the view of this Panel that the Respondent has intentionally registered the disputed domain name which employs a

misspelling of the Complainant’s trademark. By the time the disputed domain name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant’s rights on its trademark ArcelorMittal. The Complainant also proved that the Respondent used the disputed domain name to pass itself off as a Complainant’s employee to conduct a phishing scheme, so that the Panel is satisfied that the disputed domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's web site or location, or of a product or service on the Respondent's web site or location. The finding of bad faith is confirmed by the fact that the Respondent failed to submit a response and that the domain name consists of a common, obvious, or intentional misspelling of the Complainant’s trademark, on this regard this Panel shares the view mentioned in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) at point 1.9: “(..) panels will normally find that employing a misspelling in this way signals an intention on the part of the Respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the Complainant”.

In addition, this Panel shares the view mentioned in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) at point 3.1.4: “(..) “given that the use of a domain name for per se illegitimate activity such as the sale of counterfeit goods and phishing can never confer rights or legitimate interest on a respondent, such behaviour is manifestly considered evidence of bad faith”.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ACELORMITALL.COM**: Transferred

PANELLISTS

Name	**Dr. Federica Togo**

DATE OF PANEL DECISION 2019-03-22

Publish the Decision