Decision for dispute CAC-UDRP-102381

Case number	CAC-UDRP-102381
Time of filing	2019-03-11 15:26:02
Domain names	mital.dev

Case administrator

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

Complainant

Organization	ARCELORMITTAL S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	hardik korat

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns International trade mark registration number 1198046 for MITTAL, which was registered on 5 May 2013.

FACTUAL BACKGROUND

The Complainant, ArcelorMittal S.A. is a large steel producing company.

The Complainant owns the International trade mark registration for MITTAL, which predates the registration of the disputed domain name.

The Respondent registered the disputed domain name on 4 March 2019. It is currently inactive.

The Respondent did not file a Response to the Complaint.

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 trade mark 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 requires the Complainant to prove each of the following three elements:

(i) That the disputed domain is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.

(ii) The Respondent has no rights or legitimate interests in the disputed domain name.

(iii) The disputed domain name has been registered and used in bad faith.

A. Identical or confusingly similar

The Complainant states that the disputed domain name is confusingly similar to its trade mark MITTAL and cites UDRP decisions FORUM No. 1550814 ArcelorMittal v. Andrew Davis et al. <mittal.ceo> and FORUM No. 1671797 ArcelorMittal v. Edward Tweedy <mittal.website> to support its case.

The Panel accepts that the Complainant owns the trade mark registration for MITTAL, which predates the registration of the disputed domain name.

It is well recognised that the generic top level suffix, such as ".com", ".org" or ".net" may be disregarded when considering whether a disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. (See WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A). The new top level suffix ".dev" can equally be disregarded when assessing whether a domain name is confusingly similar to a trade mark.

Ignoring the top level suffix ".dev", the only difference between the disputed domain name and the Complainant's mark MITTAL is the omission of the letter "t". The omission of the letter "t" does not avoid the disputed domain name being confusingly similar to the Complainant's trade mark MITTAL.

The Panel concludes that the disputed domain name is confusingly similar to the Complainant's trade mark and that the requirements of Paragraph 4(a)(i) of the Policy have been met.

B. No rights or legitimate interests

The Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain name <mital.dev> and states that:

(i) The Respondent has not used the disputed domain name in connection with the offering of any services or in relation with an active website.

(ii) The Respondent is not known as the disputed domain name.

(iii) The Respondent is not related in any way with the Complainant and does not carry out any activity for, or have any business with, the Complainant.

(iv) The Complainant has not granted the Respondent a license, nor authorised him to make any use of the Complainant's trade mark MITTAL or apply for registration of the disputed domain name.

The Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of proof now shifts to the Respondent (see WIPO Case No. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd).

The Respondent has not filed a Response nor disputed any of the Complainant's submissions. The Respondent is not authorised to use the Complainant's trade mark. There is nothing to indicate that the Respondent has used or has been preparing to use the disputed domain name in connection with a bona fide offering of goods or services, or that the Respondent is commonly known by the disputed domain or has any relevant prior rights of its own.

The Panel concludes that the Complainant has shown that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. Registered and used in bad faith

The Complainant contends that Respondent has registered and is using the disputed domain name in bad faith. It states that the disputed domain name is confusingly similar to its distinctive trade mark MITTAL and asserts that the misspelling of MITTAL was intentionally designed to be confusingly similar to the Complainant's trade mark. It submits that the disputed domain name resolves to an inactive web page and has not been used in connection with the offering of any services and says that merely holding an infringing domain name without active use can constitute bad faith use (WIPO Case No. D2000-1228, Clerical Med. Inv. Group Ltd. v. Clericalmedical.com).

The Respondent has not filed a Response, nor disputed any of the Complainant's assertions nor given any reason for registering the disputed domain name and for using a privacy service to do so. The name MITTAL is well-known and it is likely that the Respondent would have been aware of it when registering the disputed domain name. There appears no reason why the Respondent would register the disputed domain name other than to create a likelihood of confusion with the mark MITTAL. The disputed domain name resolves to an inactive webpage and there is no evidence to show that it has ever been used in connection with a bona fide offering of goods or services.

Taking into consideration the combined factors that the Complainant's mark is well-known, the use of a privacy service, and the passive holding of the disputed domain name, the Panel finds that the Complainant has proved that the disputed domain name was registered and used in bad faith (see WIPO Case No. D2017-0246 "Dr. Martens" International Trading GmbH and "Dr Maertens" Marketing GmbH v Godaddy.com Inc.).

Accordingly, the Panel finds that the Complainant has satisfied the requirements 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. **MITAL.DEV**: Transferred

PANELLISTS

Name	**Veronica Bailey**

DATE OF PANEL DECISION 2019-04-22

Publish the Decision