Decision for dispute CAC-UDRP-102399

Case number	CAC-UDRP-102399
Time of filing	2019-03-20 10:43:01
Domain names	arcelormittalmx.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	acero

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

In this proceeding, the Complainant relies on the trademark:

- ArcelorMittal (word), International Registration No. 947686, registered on August 03, 2007.

FACTUAL BACKGROUND

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

THE DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

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 is the owner of international trademark No. 947686 ArcelorMittal, registration date – August 03, 2007 and is also the owner of several domain names that include the ArcelorMittal trademark, such as <arcelormittal.com>.

The disputed domain name was registered on March 13, 2019 and resolves to a website displaying the Complainant's trademark and information regarding the Complainant and its activities in Mexico.
The Complainant states that the disputed domain name is confusingly similar to its trademark since it includes the Complainant's trademark in its entirety.
The Complainant contends that the addition of the geographic abbreviation "MX" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark of the Complainant.
The addition of the term "MX", which is the abbreviation for Mexico, increases the likelihood of confusion between the disputed domain name and the Complainant's trademark. The Complainant is present in Mexico.
Besides, previous UDRP decisions have confirmed the Complainant's rights.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DOMAIN NAME

The Complainant asserts that the Respondent is not known under the disputed domain name. The Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.
Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark, or apply for registration of the disputed domain name.
The disputed domain name resolves to a website which looks like the official website of the Complainant. The Complainant's trademark is used on the website under the disputed domain name, and the Respondent identifies itself as "ARCELORMITTAL MEXICO", established at the address: "Francisco J. Múgica 1, 60953 Ciudad Lázaro Cárdenas, Michoacán de Ocampo, Mexico", which is similar to the official address of the Complainant's office in Mexico. Thus, as the Complainant contends, the registrant tries to pass off as an affiliate of the Complainant in Mexico for commercial gain. Therefore, the Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use.

THE DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

According to the Complainant, its trademark is widely known and the Complainant refers to previous UDRP decisions recognizing this fact.
The disputed domain name resolves to a website which displayed the Complainant's trademark and where the Respondent identified itself as "ARCELORMITTAL MEXICO". Therefore, it confirms that the Respondent knew about the Complainant and its rights.
Given the distinctiveness of the Complainant's trademark and reputation and the fact exposed above, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.
Since the disputed domain name resolves to a website which displays the Complainant's trademark and where the Respondent identifies itself as "ARCELORMITTAL MEXICO", the Complainant contends that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the web site.

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

A. Identical or confusingly similar with Complainant's trademark

The Complainant owns the international registration for the "ArcelorMittal" word mark.
As confirmed by WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition("WIPO Overview 3.0"), see paragraph 1.2.1: "Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case".

The disputed domain name entirely incorporates the Complainant's trademark with the addition of the "mx" element in the end.

As stated in WIPO Overview 3.0 "In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing" (see par. 1.7).

In the present case the Complainant's "ArcelorMittal" trademark is clearly recognizable in the disputed domain name. The addition of the "mx" element does not change an overall impression of the disputed domain name and indicates connection with Mexico where the Complainant has business activity.

The .com domain zone shall be disregarded under the identity or the confusing similarity test as it does not add anything to the distinctiveness of the disputed domain name.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

(i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
(ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied (see Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110;
Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455 and CAC Case No. 101284).
The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows all reasonable inferences of fact in the allegations of the complaint to be deemed true (see paragraph 14(b) of the Rules and FORUM Case No. 0006000095095, Vertical Solutions Management, Inc. v. webnet-marketing, inc.).

The disputed domain name was used for a web site that appeared to impersonate Complainant's web site and business in Mexico.
The evidence available in this case indicates that the Respondent attempted to represent the web site under the disputed

domain name as Complainant's web site in Mexico.

Such use cannot give rise to any legitimate rights and interests under the Policy. It is recognized that the use of a domain name for impersonation/passing off, or other types of fraud can never confer rights or legitimate interests on a respondent (see par.2.13.1 of WIPO Overview 3.0).
Therefore, the Panel finds that the Complainant has satisfied the second requirement of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.
These circumstances are non-exhaustive and other factors can also be considered in deciding whether the disputed domain name is registered and used in bad faith.
The disputed domain name was used for a web site that attempted to impersonate Complainant's web site in Mexico (Complainant's office in Mexico).

This clearly indicates Respondent's actual knowledge of the Complainant and its trademark.
The Complainant's trademark can be qualified as widely-known and the Complainant and its ArcelorMittal trademark have been frequent targets of cyber-squatters (see e.g. decisions of previous panels in CAC Case No.102360, CAC Case No.102349, CAC Case No.10220, CAC Case No. 102148).

Previous panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith (see par. 3.1.4. of WIPO Overview 3.0).

The Complainant's trademark is widely-know and the Respondent's use of the disputed domain name and content of the web site under the disputed domain name prove Respondent's actual knowledge of the Complainant and its trademark.
All the circumstances and evidence of this case indicate that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks (see e.g. Swarovski Aktiengesellschaft v. WhoisGuard Protected / Peter D. Person, WIPO Case No. D2014-1447:
"The disputed domain name is used for a website which, inter alia by reproducing the Complainant's logo and by using the phrase "Welcome to Swarovski Sale UK" clearly gives Internet users the impression that the website is an official Swarovski website and that the Respondent is an authorized seller of Swarovski products. This is not the case, and the Panel therefore finds that the Respondent by its registration and use of the disputed domain name intentionally creates a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the disputed domain name with the purpose of attracting Internet users to the website for commercial gain" and par. 3.1.4. of WIPO Overview 3.0 – "given that the use of a domain name for per se illegitimate activity can never confer rights or legitimate interests on a respondent, such behavior is manifestly considered evidence of bad faith").

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITTALMX.COM**: Transferred

PANELLISTS

Name	**Igor Motsnyi**

DATE OF PANEL DECISION 2019-04-22