Decision for dispute CAC-UDRP-102473

Case number	CAC-UDRP-102473
Time of filing	2019-05-03 09:15:29
Domain names	arcelormitfal.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Martina Gomaz

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant bases its Complaint on the trademark ARCELORMITTAL, International trademark registration No. 947686, of 3 August 2007, protected for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42, designating several countries for protection, among which the United States, where the Respondent is located.

FACTUAL BACKGROUND

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

The Complainant is ARCELORMITTAL S.A., a multinational steel manufacturing corporation, 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 holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant operates under the trademark ARCELORMITTAL, registered in several countries worldwide, and owns several “arcelormittal“ domain names, among which <arcelormittal.com>, which was registered since 27 January 2006.

The disputed domain name was registered on 24 April 2019 and resolves to an inactive webpage.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant's contentions are the following:

The disputed domain name is confusingly similar to the Complainant's earlier ARCELORMITTAL trademark since it contains an obvious misspelling of the Complainant's trademark. The substitution of the letter "T" by the letter "F" in the Complainant's trademark is insufficient to avoid confusing similarity.

Therefore, the disputed domain name is a clear case of typosquatting. Previous UDRP panels have found that slight spelling variations do not prevent a disputed domain name from being confusingly similar to the Complainant's trademark.

Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. The Complainant sustains that this does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name for a number of reasons.

First, the Complainant asserts that the Respondent does not appear to be commonly known by the disputed domain name.

The Complainant further asserts that the Respondent has no relationships with the Complainant. The Complainant does not carry out any activity for, nor has any business with, the Respondent. The Respondent is not a Complainant's licensee, nor has ever been authorised to make use of the Complainant's trademark or to apply for the registration of the disputed domain name.

The Complainant's further asserts that disputed domain name is a typosquatted version of the ARCELORMITTAL trademark. Typosquatting is an attempt to take advantage of Internet users' typographical errors and can be evidence of the Respondent's lack of rights or legitimate interests in a domain name.

Lastly, the Complainant points out that the disputed domain name resolves to an inactive webpage and that the Respondent did not make any use of disputed domain name since its registration, which is further evidence of the Respondent's lack of rights or legitimate interests.

The Complainant argues that the disputed domain name has been registered, and is been used in bad faith.

The Complainant's maintains that its ARCELORMITTAL trademark is well-known and therefore, that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain name is a form of typosquatting. Typosquatting is also evidence of bad faith.

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

I. Confusing Similarity

The Panel agrees that the substitution of the letter “T” by the letter “F” in the Complainant’s trademark is insufficient to avoid confusing similarity.

As a matter of fact, despite the slight misspelling, the Complainant’s trademark is still recognizable within the disputed domain name. Previous UDRP CAC and WIPO decisions, even involving the Complainant, have recognized that typosquatting usually entails a finding of confusing similarity for the purpose of the first element under the Policy.

Moreover, the extension “.com” is not to be taken into consideration when examining the similarity between the Complainant’s trademarks and the disputed domain name (WIPO Case No. D2005-0016, Accor v. Noldc Inc.). The mere adjunction of a gTLD such as “.com” is irrelevant as it is well established that the generic Top Level Domain is insufficient to avoid a finding of confusing similarity (WIPO Case No. 2013-0820, L’Oréal v Tina Smith, WIPO Case No. D2008-0820 Titoni AG v Runxin Wang and WIPO Case No. D2009-0877, Alstom v. Itete Peru S.A.).

Therefore, the Panel is satisfied that the first condition under the Policy is met.

II. Lack of Respondent's rights or legitimate interests

The complainant is required to make out a prima facie case that a 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. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant has never authorised the Respondent to make use of its trademark, nor of a confusingly similar trademark in the disputed domain name.

Finally, the disputed domain name is a typosquatted version of the Complainant’s trademark and does not lead to any active webpage. Such use does not amount to a bona fide offering of goods or services, or to a legitimate non-commercial or fair use of the disputed domain name.

The Panel notes that the Respondent had an opportunity to comment on the Complaint’s allegations by filing a Response, which the Respondent failed to do.

Thus, the Panel is satisfied that the Complainant has at least established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Accordingly, the Panel takes the view that also the second requirement under the Policy is met.

III. Bad Faith

The Complainant's trademark is a well-known one as recognized also by past CAC panels and the disputed domain name is a typosquatting of the Complainant’s trademark. Therefore, the Panels concludes that at the time of registration of the disputed domain name, the Respondent was well aware of the Complainant’s trademark and has intentionally registered one of its possible misspellings.

Numerous UDRP panels have found that typosquatting constitutes bad faith (see, amongst others, ARCELORMITTAL S.A. v. stave co ltd, CAC Case No. 102180; ARCELORMITTAL S.A. v. jerry murray, CAC Case No. 102257; Calvin Klein Trademark Trust, Calvin Klein, Inc. v. Moniker Privacy Services, WIPO Case No. D2015-2305; Wikimedia Foundation Inc v. Privacy Protect.org/Domain Tech Enterprises, WIPO Case No. D2015-1705; Moneyweek Limited v. he jianyi Case No. D2015-1700).

The disputed domain name is inactive since its registration. Under certain circumstances, the passive holding of a domain name cannot prevent a finding of bad faith. Factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put (See paragraph 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Jurisprudential Overview 3.0)).

In the present case, the following factors should be considered:

(i) the Complainant's trademark is a well-known one, being also highly distinctive;

(ii) the Respondent failed to submit any response and has not provided any evidence of actual or contemplated good faith use of the disputed domain name;

(iii) the Respondent registered the disputed domain name containing an obvious, common and intentional misspelling of the Complainant’s trademark, which is a typical pattern used for abusive “typosquatting” registrations; and

(iv) any good faith use of the disputed domain name would be implausible, as the trademark ARCERLORMITTAL is univocally linked to the Complainant and the Respondent has no business relationship with the Complainant, nor was ever authorised to use a domain name confusingly similar to the Complainant's trademark.

In light of the foregoing, the Panel concludes that the Respondent has registered and has been using the disputed domain name in bad faith. Thus, also the third and last condition under the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITFAL.COM**: Transferred

PANELLISTS

Name	**Delia-Mihaela Belciu**

DATE OF PANEL DECISION 2019-06-11

Publish the Decision