Decision for dispute CAC-UDRP-102500

Case number	CAC-UDRP-102500
Time of filing	2019-05-23 10:27:36
Domain names	mittalmx.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 proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of several trademarks. In particular, ARCELORMITTAL owns the International Registration No. 1198046 "MITTAL" registered on December 5, 2013 for classes 6 and 40 and protected in many countries including Mexico.

FACTUAL BACKGROUND

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 holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The disputed domain name was registered on May 17, 2019 and currently it resolves to a mere parking page including various commercial links.

The Complainant states that the disputed domain name is confusingly similar to its registered trademark "MITTAL". The addition of the geographic term MX is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark "MITTAL".

The Complainant also proved to be the owner of an important domain names portfolio containing the same wording "MITTAL" such as the domain name <mittalsteel.com> registered since January 3, 2003.

The Complainant states that the Respondent has no rights or legitimate interests in the disputed domain name. The Complainant also argues that the Respondent has no relationship with Complainant's business and is not authorized or licensed to use the trademark "MITTAL".

In the Complainant's view, given the distinctiveness of the Complainant's trademark "MITTEL", it is reasonable to conclude that the Respondent has registered the domain name in dispute with full knowledge of the Complainant's trademark.

The Complainant also points out that currently the disputed domain name resolves to a mere parking page with commercial links.

Therefore, the Complainant contends that the Respondent was aware of the Complainant when registering and subsequently using the disputed domain name and also that Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by using the Complainant's mark.

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

Paragraph 4(a) of the Policy provides that to obtain the transfer of the disputed domain name, the Complainant must prove that each of the following elements is present:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

1) The Complainant has established that he has rights in the trademark "MITTAL" at least since December 2013. The Complainant's trademark is registered well before with respect to the registration of the disputed domain name (May 17,

2019). The Panel finds that the disputed domain name is confusingly similar to "MITTAL" as the disputed domain name differs from the Complainant's trademark only for the letters "mx" at the end of the word, and for the top-level domain ".com". The Panel accepts that the addition of the "mx" element does not avoid the confusing similarity between the disputed domain name and the mark since "mx" simply indicates a connection with Mexico where the Complainant has business activity as also stated by a previous Panel in a recent case involving the same parties of the present proceedings and related to the domain name <arcelormittalmx.com> (Arcelormittal v. Acero - CAC Case No. 102399). Furthermore, in accordance with the consensus view of past UDRP panels, the Panel finds that the Top-Level domain ".com" is not sufficient to exclude the likelihood of confusion. The Complainant therefore succeeds on the first element of the Policy.

2) The Complainant provided prima facie evidence that the Respondent does not have rights or legitimate interests in respect of the disputed domain name as it is not commonly known under the disputed domain name and was never authorized to use it by the Complainant. The Respondent, in the absence of any response, has not shown any fact or element to justify prior rights or legitimate interests in the disputed domain name. The Complainant therefore succeeds also on the second element of the Policy.

3) Paragraph 4(b) of the UDRP Policy sets out the following examples of circumstances that will be considered by an Administrative Panel to be evidence of the bad faith registration and use of a domain name:
(i) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the domain name registrant's out-of-pocket costs directly related to the domain name; or
(ii) the domain name was registered in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the domain name registrant has engaged in a pattern of such conduct; or
(iii) the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the domain name registrant intentionally attempted to attract for financial gain, Internet users to the registrant's website 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 registrant's website or location or of a product or service on the registrant's website or location.
The above examples are not exclusive and other circumstances may exist that demonstrate the registration and use of a domain name in bad faith.
As to the registration of the disputed domain name in bad faith, the distinctive character of the Complainant's trademark and its reputation is such that, in the Panel's view, the Respondent could not ignore the trademark "MITTAL" at the time of the registration of <mittalmx.com>. Furthermore, there is no evidence that the disputed domain name has been actively used by the Respondent as a website. Instead, it only directs to a parking page containing various commercial links. This circumstance reveals the Respondent's primary motive in relation to the registration and use of the disputed domain name which is, in the Panel's view, to profit from the goodwill associated with the Complainant's "MITTAL" trademark.
According to previous decisions, by diverting Internet users to the website associated with the disputed domain name, the Respondent is benefiting from pay-per-click revenue and profits, which is evidence of use of the disputed domain name in bad faith (see, Accor SA v. Domain Administrator, PrivacyGuardian.org / Zhichao Yang, WIPO Case No. D2017-1322 and Accor SA v. Jan Everno, The Management Group II, WIPO Case No. D2017-2212). As the conduct described above falls within paragraph 4(b)(iv) of the Policy (see Triumph International Vietnam Ltd v. Tran Quoc Huy, WIPO Case No. D2017-0340), the Panel concludes that the Respondent registered and is using the disputed domain name in bad faith pursuant to the paragraph 4(a)(iii) of the Policy. The Complainant therefore succeeds also on the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MITTALMX.COM**: Transferred

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2019-07-04

Publish the Decision