Decision for dispute CAC-UDRP-102539

Case number	CAC-UDRP-102539
Time of filing	2019-06-19 08:57:31
Domain names	arcelormittals.net

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Eric Gagne

OTHER LEGAL PROCEEDINGS

The Panel is not aware of pending or decided legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant proved to be the owner of the international trademark registration no. 947686 for ARCELORMITTAL registered on August 3, 2007.

The Complainant also proved to own the domain name <arcelormittal.com>.

FACTUAL BACKGROUND

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

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, operating in more than 60 countries.

The Complainant holds the international trademark registration no. 947686 for ARCELORMITTAL, registered on August 3, 2007 and a wide domain name portfolio, including <arcelormittal.com> registered on January 27, 2006.

The disputed domain name <arcelormittals.net> was registered on June 11, 2019 and links to an error page.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant claims that the disputed domain name is confusingly similar to its prior trademark and domain name as the addition of the letter "s" at the end of the domain is not sufficient to exclude confusingly similarity with ARCELORMITTAL.

The Complainant supports its allegations citing several UDRP decisions which confirmed that minor spelling variations do not prevent domain names from being confusingly similar to the Complainant's trademarks.

Finally, the Complainant contends that TLD are disregarded when assessing confusingly similarity as they are considered as standard registration requirements.

The Complainant claims that the Respondent has no rights nor legitimate interest in registering the disputed domain name. According to the Complainant assertions, there is no evidence that the Respondent is known as the disputed domain name or is, in some way, authorized to use the ARCELORMITTAL trademark.

Finally, the actual use of the disputed domain name is not considered a "bona fide offering of goods or services" or a "legitimate noncommercial or fair use" for the purposes of the Policy.

As regards registration and use in bad faith, the Complainant claims that since the ARCELORMITTAL trademark is widely known, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's rights.

Moreover, the fact that the domain name links to an inactive website is considered an additional index of use in bad faith.

RESPONDENT:

No administratively compliant Response was 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 disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Complainant has successfully proved to be the owner of the trademark ARCELORMITTAL and of the domain name <arcelormittal.com>.

The disputed domain name is composed by the element "arcelormittal" combined with the letter "s" at the end of the domain name.

The Panel finds that the trademark “ARCELORMITTAL” is fully recognizable in the disputed domain name and that the addition of the letter "S" has no significant impact in the confusing similarity assessment.

According to a consolidated case law 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 it, the confusing similarity threshold is met.

Furthermore, the addition of “.net” is generally disregarded in view of its technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

Pursuant to paragraph 4(a)(ii) of the Policy, a complainant is required to make out a prima facie case that a respondent lacks rights or legitimate interests in the Domain Name. Once such a prima facie case is made, the respondent carries the burden of demonstrating its rights or legitimate interests in the Domain Name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

In this case, the Panel finds that the Complainant’s submitted evidence and allegations are sufficient to establish a prima facie case of Respondent’s lack of rights and legitimate interests in the disputed domain name.

According to the information provided by the Complainant and not contested by the Respondent, Mr. Eric Gagne is not commonly known by the disputed domain name nor he is authorized to use the Complainant’s trademark “ARCELORMITTAL”.

Additionally, the disputed domain name links to an inactive page. The Panels finds that the lack of contents at the disputed domain name shows the absence of a bona fide offering of goods or services and of a legitimate non-commercial/fair use of the disputed domain name.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the Policy.

3. The disputed domain names have been registered and are being used in bad faith.

The Panel finds the following circumstances as material in order to establish the Respondent's bad faith in the registration of the disputed domain name:

(i) the disputed domain name was registered well after the Complainant acquired rights on the trademark ARCELORMITTAL;

(ii) the Complainant's trademark is widely known as confirmed by previous Panels (CAC Case No. 101908; CAC Case No.

101667). The reputation of the trademark ARCELORMITTAL makes it very improbable that the Respondent was not aware of the Complainant's exclusive rights on ARCELORMITTAL at the time of the registration of the disputed domain name;

(iii) the disputed domain name is a clear and obvious misspelling of the Complainant's trademark (i.e. typo squatting). Previous panels found that typosquatting discloses an intention on the part of the respondent to confuse users seeking or expecting to find a website related to the Complainant.

Currently, the disputed domain name is not used. It is consensus view among the UDRP panels, that non-use of a domain name does not prevent a finding of use in bad faith (WIPO Case No. 2000-0003). In this case, the Panel considers the following circumstances as material to conclude that the disputed domain name is used in bad faith:

(i) the high degree of distinctiveness and reputation of the Complainant's trademark which makes it very improbable that the disputed domain name could be used in good faith;

(ii) the Respondent had the chance to explain the reason of the registration/use of the disputed domain name in this administrative proceeding but failed to do so;

(iii) the Respondent shielded its contact details using a privacy protection service which combined with the other elements is a further index of use in bad faith.

All above considered the Panel finds the evidence submitted as sufficient to prove use and registration in bad faith of the disputed domain name for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITTALS.NET**: Transferred

PANELLISTS

Name	**Andrea Mascetti**

DATE OF PANEL DECISION 2019-07-17

Publish the Decision