Decision for dispute CAC-UDRP-102520

Case number	CAC-UDRP-102520
Time of filing	2019-06-07 12:07:33
Domain names	tubaraoarcelormittal.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Fundacion Comercio Electronico

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant, ARCELORMITTAL S.A., holds trademark rights for the word mark ARCELORMITTAL registered in numerous jurisdictions (e.g. the international trademark n° 947686 for the sign 'ArcelorMittal', registered on August 3, 2007 and covering products and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42).

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.

The Complainant is the holder of the registered word marks ARCELORMITTAL in several classes in numerous countries and regions all over the world.

The disputed domain name <tubaraoarcelormittal.com> was registered on May 22, 2019. According to evidence provided by the Complainant, it resolves to a parking page with commercial links, some related to the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT: The Complainant considers the disputed domain name to be confusingly similar to trademarks in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent does not use the disputed domain name in connection with any legitimate use. Also, according to the Complainant, the Respondent has not been commonly known by the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent must have known of the existence of the Complainant's trademark given its distinctiveness and reputation. The Complainant further claims that the Respondent has used the disputed domain name in order to intentionally attempt to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. The Complainant also contends that the Respondent has engaged in a pattern of trademark-abusive domain name registrations.

RESPONDENT: The Respondent did not reply to the Complainants' contentions.

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 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are civil, the standard of proof is the balance of probabilities.

Thus, for the complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

2. The Respondent has no rights or legitimate interests in respect of the domain name; and

3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Confusing similarity of the disputed domain name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered ARCELORMITTAL trademark, which is used in connection with the Complainant's business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name incorporates the Complainant's ARCELORMITTAL trademark in its entirety, merely adding the prefix "tubarao". The addition of this term does not add to the distinctiveness of the disputed domain name, as it refers to a Brazilian city. The addition of a geographical term does not prevent a finding of confusing similarity (See section 1.8, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0").

Additionally, it is well established that the generic top-level suffix ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (See Champion Innovations, Ltd. V. Udo Dussling (45FHH), WIPO case No. D2005-1094; Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO case No. D2003-0455; Belupo d.d. v. WACHEM d.o.o., WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. It appears that the Respondent has been using the disputed domain name to refer to a standard parking page with sponsored links, some of which refer directly to the Complainant. According to the Panel, this cannot be considered as fair use of the disputed domain name.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the ARCELORMITTAL trademark at the moment it registered the disputed domain name, since the disputed domain name incorporates the Complainant's distinctive ARCELORMITTAL trademark in its entirety in combination with the name of a city in which the Complainant is present.

The Respondent has been using the disputed domain name in relation to a standard parking page displaying sponsored PPC links. While the intention to earn click through-revenue is not in itself illegitimate, the Panel finds that the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use (see Mpire Corporation v. Michael Frey, WIPO Case No. D2009-0258; L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc, WIPO Case No. D2005-0623). The Panel finds that by using the disputed domain name incorporating the Complainant's trademark in connection with a website containing links directly referring to the Complainant, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's trademark. The addition of the term "tubarao" in the domain name may increase confusion amongst users in this case as the Complainant has a presence in this city.

Additionally, the Complainant shows that the Respondent has been the subject of other UDRP proceedings in which panels have ordered the transfer of the disputed domain name to the complainant. Some of these cases related to the ARCELORMITTAL trademark of the Complainant. Such pattern of cybersquatting also evidences bad faith pursuant to paragraph 4(b)(ii) of the Policy as it prevents the Complainant from reflecting its mark in a domain name and the Respondent has engaged in a pattern of such conduct.

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent's bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **TUBARAOARCELORMITTAL.COM**: Transferred

PANELLISTS

Name	**Flip Petillion**

DATE OF PANEL DECISION 2019-07-22

Publish the Decision