Decision for dispute CAC-UDRP-102515

Case number	CAC-UDRP-102515
Time of filing	2019-06-04 11:47:29
Domain names	ercelormittal.website

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Comios Enterprises PLC

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

Complainant is the owner of numerous “ArcelorMittal” trademarks worldwide and in the U.S. including „ArcelorMittal“ (Reg No. 947686 registered on June 18, 2007).

The Complainant also owns various domain names including <arcelormittal.com> and <arcelormittal.website>.

FACTUAL BACKGROUND

The Complainant, ARCELORMITTAL (SA), is the successor to Mittal Steel, a business originally set up in 1976 by Mr Lakshmi N Mittal. ArcelorMittal was created through the merger of Arcelor and Mittal Steel in 2006. The Complainant is a company specialized in steel production and is the largest steel production company in the world 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 27, 2019, and presently resolves to a parking page.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant argues that the disputed domain name is identical to the ARCELORMITTAL mark since the substitution of the letter „A“ with „E“ in the disputed domain name and the addition the gTLD „.WEBSITE“ does not avoid confusing similarity with the Complainant’s trademark.

The Complainant also argues that Respondent does not have rights or legitimate interests in the disputed domain name. Respondent is not commonly known as the domain name or in possession of licensing rights.

The Complainant further argues that the disputed domain name was registered and is being used in bad faith. The Complainant argues that the Respondent is typosquatting with the disputed domain name and possessed actual notice and knowledge of its ARCELORMITTAL mark due to its fame and Respondent had acted in bad faith by registering the disputed domain name.

RESPONDENT:
The Respondent did not file a Response.

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

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner.

The Complainant has provided evidence of its trademarks’ registrations of the ARCELORMITTAL mark in the U.S.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The disputed domain name <ercelormittal.website> comprises of a substitution of the letter „A“ with the letter „E“ which is insufficient to avoid confusing similarity with the Complainant’s ARCELORMITTAL mark. (see Wal-Mart

Stores, Inc. v. Kuchora, Kal, WIPO Case No. D2006-0033; Hoffmann-La Roche Inc. v. Andrew Miller, WIPO Case No. D2008-1345).

It is also well established that gTLDs „.website“ may typically be disregarded in the assessment of under paragraph 4(a)(i) of the Policy (See WIPO Overview 3.0, section 1.11).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the Complainant to show that the Respondent has no rights or interests in respect of the domain name.

Once a complainant establishes a prima facie case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, paragraph 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that the Respondent, identified as “Comios Enterprises PLC” in the Whois, is not commonly known as the disputed domain name, nor is Respondent authorized or licensed to use the ARCELORMITTAL mark. See M. Shanken Commc’ns v. WORLDTRAVELERSONLINE.COM, FA 740335 (Nat. Arb. Forum Aug. 3, 2006) (finding that the respondent was not commonly known by the <cigaraficionada.com> domain name under Policy 4(c)(ii) based on the WHOIS information and other evidence in the record).

The Respondent has not submitted a response and did not provide any evidence to show any rights or legitimate interests in the disputed domain name to rebut the Complainant’s prima facie case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to show that its domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its trademarks. The Complainant’s evidence has shown that it owned the trademark since 2007 whereas the disputed domain name was only registered in May 2019. Under these circumstances, the Complainant's prior registered trademark is suggestive of the Respondent's bad faith (see Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735).

The Complainant provided evidence showing that the Respondent is engaging in typosquatting by registering the disputed domain name in an attempt to take advantage of Internet users‘ typographical errors when they attempt to access the Complainant’s websites. (See NAF Case No. FA 877979, Microsoft Corporation v. Domain Registration Philippines) The disputed domain name is confusingly similar to the Complainant’s mark and points to a registrar parking page. The Complainant has shown evidence that the Respondent did not make any use of the disputed domain name since its

registration and it is likely that the Respondent has no demonstrable plans to use the disputed domain names, thereby showing a lack of legitimate interests in the disputed domain name. The Panel also notes that the Respondent did not file a Response to this proceedings and further construes such behavior in bad faith.

Given that the ARCELORMITTAL is a highly distinctive mark that does not have any meaning, the Respondent's behavior is clear evidence of bad faith registration and use of the disputed domain name.

Based on the evidence presented to the Panel, including the registration of the disputed domain name long after the registration of the Complainant's marks, the confusing similarity between the disputed domain name and the Complainant's marks, the Respondent's use of the disputed domain name, the Respondent's failure to present any credible rationale for registering the disputed domain name, and the fact that is no plausible good faith use the Respondent can put the disputed domain name to, the Panel finds 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. **ERCELORMITTAL.WEBSITE**: Transferred

PANELLISTS

Name	**Mr. Jonathan Agmon**

DATE OF PANEL DECISION 2019-07-22

Publish the Decision