Decision for dispute CAC-UDRP-102608

Case number	CAC-UDRP-102608
Time of filing	2019-08-01 11:28:44
Domain names	arccelormital.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Cortest Inc

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of the international trademark registration no. 947686 for the "ArcelorMittal" word, registered on 3 August 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 designating numerous countries around the world.

The Complainant is the registered holder of the domain name <arcelormittal.com>, registered since 27 January 2006.

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 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 18 July 2019 and points to a parking page with commercial links.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain name and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

With respect to identical or similar domain requirement, the Complainant asserts that the disputed domain name is confusingly similar to its trademark. According to the Complainant, the addition of the letter "C" and the deletion of the letter "T" to the "ARCELORMITTAL" trademark is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark. The Complainant contends that this is a clear case of "typosquatting", i.e. the disputed domain name contains an obvious misspelling of the Complainant's trademark. The Complainant mentions that previous panels found that the slight spelling variations did not prevent a disputed domain name from being confusingly similar to the Complainant's trademark (in particular in CAC cases No. 102360, No. 102346 and No. 102319).

According to the Complainant, it is well established that TLDs may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain names and trademark. Consequently, the Complainant submits that the disputed domain name is confusingly similar to the Complainant's trademark.

Regarding Respondent's rights or legitimate interests, the Complainant asserts that the Respondent is not known as the disputed domain name, but as "Cortest Inc". Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark or apply for registration of the disputed domain name by the Complainant.

Besides, the Complainant also claims that the disputed domain name is a typo squatted version of the "ARCELORMITTAL" trademark. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name.

The Complainant also argues that the disputed domain name points to a parking page with commercial links. Referring to past panels having found it was not a bona fide offering of goods or services or legitimate non-commercial or fair use, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

Turning to the bad faith argument, the Complainant makes the following assertions.

The Complainant contends that the disputed domain name is confusingly similar to its distinctive "ARCELORMITTAL" trademark, which is widely known. The Complainant refers to earlier panel decisions that confirmed the notoriety of the "ARCELORMITTAL" trademark (in particular, CAC cases No. 101908 and No. 101667).

Given the distinctiveness of the Complainant's trademark and reputation, the Complainant believes it reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark (referring to WIPO Case No. DCO2018-0005).

Moreover, the Complainant states that the misspelling of the "ARCELORMITTAL" trademark was intentionally designed to be confusingly similar with the Complainant's trademark, which previous UDRP panels had found to be evidence of bad faith.

The Complainant further refers to the fact that the disputed domain name points to a parking page with commercial links. The Complainant contends that the Respondent attempts to attract internet users by creating a likelihood of confusion with the Complainant's trademark, which past panels found to be evidence of bad faith registration and use.

Thus, the Complainant contends that the Respondent has registered the disputed domain name and is using it in 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

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

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

According to Paragraph 4(a) of the Policy, the Complainant must prove each of the following: (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; (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or confusingly similar

The Complainant demonstrated that it owns the asserted international trademark registration for the word mark "ArcelorMittal" which was registered almost 12 years earlier than the disputed domain name. It is well established that a nationally or regionally registered trademark confers on its owner sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case. Therefore, the Panel finds that the Complainant has established such rights.

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

The disputed domain name incorporates the Complainant's trademark "ArcelorMittal" in its entirety. The only difference is the additional letter "c" and the missing letter "t". From a slightly different perspective, instead of duplication of letters "tt" in the Complainant's trademark, the disputed domain name contains duplication of letters "cc". The Panel agrees that such

minor difference is not sufficient to prevent the confusing similarity with the Complainant's trademark. The Panel also finds that the disputed domain name consists of a common, obvious and, most probably, intentional misspelling of a trademark. Such cases have been consistently considered by UDRP panels to be confusingly similar to the relevant mark for purposes of the first element (cf. Section 1.9 of the WIPO Jurisprudential Overview 3.0) and this Panel sees no reason to deviate from this practice.

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

B. Lack of rights or legitimate interests

The Respondent has not filed a Response and has neither provided any other information that would oppose the Complainant's allegations. Therefore, the Panel holds that the Complainant successfully presented its prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not in any way connected with the Complainant nor is it authorized to use the Complainant's trademark for its commercial activities. In addition, the Respondent is not commonly known by the disputed domain name pursuant to Paragraph 4(c)(ii) of the Policy.

Furthermore, it was demonstrated by evidence submitted by the Complainant that the disputed domain name is or was connected to a website displaying sponsored links. Such use can neither be considered a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue in the sense of Paragraph 4(c)(i) and (iii) of the Policy. As previously established by other UDRP panels, the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users (cf. Section 2.9 of the WIPO Overview 3.0).

The Panel, therefore, finds that the Respondent has no rights or legitimate interest in the disputed domain name.

C. Registration and use in bad faith

With respect to the bad faith argument, the Complainant states, in summary, that the disputed domain name is confusingly similar to its widely known trademark, that the Respondent had registered the disputed domain name with full knowledge of the Complainant's trademark, with which the disputed domain name was intentionally designed to be confusingly similar, and that the disputed domain name points to a parking page with commercial links.

The Panel has already found that the disputed domain name is confusingly similar (almost identical) to the Complainant's trademark "ArcelorMittal". The Complainant submitted evidence that the Panel believes sufficiently demonstrates the Respondent must have been aware of the existence of the Complainant and its trademark because of its well-known status as well as its distinctive character. The evidence submitted by the Complainant also shows that, at least upon filing the complaint, the disputed domain name was directed to a parking page with sponsored links.

It is well established that mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can lead to the presumption of bad faith. Furthermore, typical circumstances demonstrating respondent's bad faith include a situation where the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location (see Paragraph 4(b)(iv) of the Policy).

Taking into account the above described facts and evidence submitted by the Complainant, the Panel is satisfied that

several signs of bad faith in registering and use of the disputed domain name by the Respondent can be found, in particular: (i) the degree of similarity between the disputed domain name and the Complainant's widely known trademark; (ii) absence of rights or legitimate interests coupled with no response to Complaint with conceivable or credible explanations of the Respondent's conduct; (iii) use of parking site with sponsored links; and (iv) absence of any conceivable good faith use.

Therefore, the Panel finds that the disputed domain name has been registered and has been used by the Respondent in bad faith.

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCCELORMITAL.COM**: Transferred

PANELLISTS

Name	**Mgr. Vojtěch Chloupek**

DATE OF PANEL DECISION 2019-09-08

Publish the Decision