Decision for dispute CAC-UDRP-102703

Case number	CAC-UDRP-102703
Time of filing	2019-10-04 11:43:22
Domain names	aarcelormittal.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Pares

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

ARCELORMITTAL S.A. (the Complainant) is a company specialized in steel producing in the world (please see their website at: www.arcelormittal.com).
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 Complainant is the owner of the international trademark n° 947686 ARCELORMITTAL® registered on August 3rd, 2007.
The Complainant also owns an important domain names portfolio, such as the domain name <arcelormittal.com> registered since January 27th, 2006.

FACTUAL BACKGROUND

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

Please see prior UDRP cases:
- CAC Case No. 102360, ARCELORMITTAL (SA) v. Milton Liqours llC <arcelornmittall.com>;
- CAC Case No. 102346, ARCELORMITTAL (SA) v. Sani Cermaic <acelormitall.com>;

- CAC Case No. 102319, ARCELORMITTAL (SA) v. Sheila Prince NA <arcelormiittall.com>.

Please see for instance FORUM Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com> (“Here, the WHOIS information of record identifies Respondent as “Chad Moston / Elite Media Group.” The Panel therefore finds under Policy paragraph 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).”)

Please see FORUM Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group (“The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy paragraph 4(a)(ii).”).

Past panels have confirmed the notoriety of the trademark ARCELORMITTAL® in the following cases:
- CAC Case No. 101908, ARCELORMITTAL v. China Capital ("The Complainant has established that it has rights in the trademark "ArcelorMittal", at least since 2007. The Complainant's trademark was registered prior to the registration of the disputed domain name (February 7, 2018) and is widely well-known.")
- CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd ("The Panel is convinced that the Trademark is highly distinctive and well-established.")

Trademark ARCELORMITTAL is so well-known internationally for metals and steel production that it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it.”).

Please see FORUM Case No. FA 877979, Microsoft Corporation v. Domain Registration Philippines ("In addition, Respondent’s misspelling of Complainant’s MICROSOFT mark in the <microssoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy paragraph 4(a)(iii).")

Please see for instance:
- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

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

1. Identical or confusingly similar

The Complainant contended that the disputed domain name <aarcelormittal.com> is confusingly similar to its well-known and distinctive trademark ARCELORMITTAL®. Compared to the Complainant's well-known trademark, the disputed domain name contains an additional letter "a". However, even though the disputed domain name is not identical to the trademark, in cases of "typosquatting", i.e. where the disputed domain name contains an obvious misspelling of the Complainant's trademark, numerous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusing similar to the Complainant's trademark. "Typosquatting" consists in selecting for a domain name a succession of letters that approximate a trade mark and/or a second-level domain name already registered. Were it an identical domain name in all its elements, the second registration could not happen. So, by necessity, there is always a slight difference between the first domain name registered as well as the corresponding trade mark and the almost identical domain name which has been registered later. Here, the additional "a" in the disputed domain name resulting a slight variation suggests the existence of a "typosquatting" instance
In addition, in supporting its argument the Complainant has also cited CAC decision 102360, 102346, and 102319, where previous panels have found required "confusing similarity" in factually similar disputes.
The Panel therefore concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights of legitimate interests

Although the Respondent did not file an administratively compliant (or any) response. the Complainant is still required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating 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 UDRP.
The Complainant makes two arguments here. First of all, the Complainant alleges that the Respondent is not known as the disputed domain name. Secondly, the Respondent has no rights or legitimate interests in respect of the domain name.
The Respondent is not known as the disputed domain name. The Respondent's name "Pares" suggests no relationship to the disputed domain name. It also does not look like that the Respondent has derived any right in using and possessing the disputed domain name, as the current website linked to by the disputed domain name is inactive. Evidence suggests that the Respondent has no demonstrable plan to use the disputed domain name.
The Respondent also has no rights or legitimate interests in respect of the domain name. The Complainant, as the trademark holder of ARCELORMITTAL, does not carry any business or commercial activity with the Respondent. At the same time, neither license nor authorization has been granted to the Respondent to make use of the Complainant's well established trademark.

On the basis of preponderance of evidence, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith

By trying to establish the bad faith element of paragraph 4(a) of the Policy, the Complainant has primarily attempted to rely on paragraph 4(b)(iv) of the Policy, " by using the domain name, you (the Respondent) have intentionally attempted to attract, for commercial gain, internet users to your web site 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 your web site or location or of a product or service on your web site or location."

The Panel is of the opinion that the mere fact that the Respondent has registered the disputed domain name actually knowing the existence of the Complainant's well-known trademark is inconclusive in establishing the Respondent's bad faith. In addition, the dispute domain name does not resolve to a web site or other on-line presence. There is no evidence that a web site or other on-line presence is in the process of being established which will use the domain name. There is also no evidence of advertising, promotion or display to the public of the domain name. Finally, there is no evidence that the

Respondent has offered to sell, rent or otherwise transfer the domain name to the Complainant, a competitor of the Complainant, or any other person. In short, there is no positive action being undertaken by the Respondent in relation to the domain name. Then the question that then arises is what circumstances of inaction (passive holding) other than those identified in paragraphs 4(b)(i), (ii) and (iii) can constitute a domain name being used in bad faith? This question cannot be answered in the abstract; the question can only be answered in respect of the particular facts of a specific case. That is to say, in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the Administrative Panel must give close attention to all the circumstances of the Respondent's behavior. Based on circumstances presented in this case, and especially those facts including a typosquatted version of the Complainant's trademark has been incorporated in the disputed domain name in a confusingly similar way, the Complainant's trademark has a strong reputation and is widely unknown, the Respondent has no relationship with the Complainant's business or brand, it is of the view of this Panel that those circumstances show that the Respondent's passive holding amounts to acting in bad faith.
Therefore, in the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AARCELORMITTAL.COM**: Transferred

PANELLISTS

Name	**Carrie Shang**

DATE OF PANEL DECISION 2019-11-07

Publish the Decision