Decision for dispute CAC-UDRP-102747

Case number	CAC-UDRP-102747
Time of filing	2019-10-25 09:34:20
Domain names	arcellormitttal.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	damendes

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies on its company name, ARCELORMITTAL, and has sufficiently demonstrated to be owner of the International trademark ARCELORMITTAL no. 947686, registered on August 3, 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41, 42 and duly renewed.

The Complainant is also owner of a portfolio of domain names, all characterized by the distinctive term ARCELORMITTAL, comprising its main domain name <arcelormittal.com> registered on January 27, 2006.

FACTUAL BACKGROUND

The Complainant is a multinational company specialized in steel manufacturing. It 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 October 16, 2019 and related website is currently inactive. Besides, the

disputed domain name has been used in a phishing scheme.

The facts asserted by the Complainant and the evidentiary documentation provided by the same to uphold such facts are not contested by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS

COMPLAINANT

The Complainant contends that the disputed domain name is confusingly similar to its distinctive and well-known trademark ARCELORMITTAL, since the addition of the letters "L" and "T" to such mark is not sufficient to escape the finding of confusing similarity between the disputed domain name and the mark in question. The Complainant asserts that this is a clear case of typosquatting, containing the disputed domain name an obvious misspelling of the Complainant's mark (the addition of the letters "L" and "T").

The Complainant submits that the Respondent does not have any rights or legitimate interest in the disputed domain name because:
- the Respondent is not commonly known by the disputed domain name;
- the Respondent is not, in any way, related to or connected with the Complainant;
- the Complainant does not carry out any activity for, nor has any business with the Respondent;
- the Respondent has not been granted any license or authorization to make any use of the Complainant's trademark ARCELORMITTAL or to register the disputed domain name;
- the disputed domain name is a typosquatted version of the Complainant's trademark ARCELORMITTAL;
- the Respondent has been using the disputed domain name to pass itself off as an employee of a division of the Complainant in order to receive payments in place of the Complainant.

The Complainant also states that the disputed domain name has been registered and is being used in bad faith for the following circumstances:
- the Complainant's trademark ARCELORMITTAL is well-known worldwide;
- given the distinctiveness and reputation of the Complainant's trademarks, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark;
- the Respondent has registered the disputed domain name which is confusingly similar to such mark, because it is a typosquatted version of the Complainant's mark;
- typosquatting practice is considered as a hallmark of bad faith registration and use;
- while the website related to the disputed domain name is inactive, the disputed domain name (and the related e-mail address) is used for phishing activities.

The Complainant, therefore, requested the transfer of the disputed domain name.

RESPONDENT

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

REQUIREMENTS OF PARAGRAPH 4(A) OF THE POLICY

According to Paragraph 4(a) of the Policy the Complainant shall prove each of the following three elements to obtain the transfer of the disputed domain name:
1. the disputed domain name registered by the Respondent 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 disputed domain name; and
3. the disputed domain name has been registered and is being used in bad faith.

I. RIGHTS AND IDENTITY OR CONFUSING SIMILARITY

The Complainant has established that it has rights in the trademark ARCELORMITTAL since 2007. The trademark of the Complainant was registered prior to the registration of the disputed domain name (October, 16 2019) and is valid and well-known worldwide, comprising the territory where the Respondent is located (USA).

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark because it wholly incorporates (the distinctive part of such mark, namely the wording ARCELORMITTAL). The addition of the letters "L" and "T" to the Complainant's registered and well-known mark neither affects the attractive power of such trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark. The Complainant is often victim of typosquatting (see CAC Cases no. 102608, 102539, 102360).

UDRP panels consider that a domain name consisting of a common, obvious, or intentional misspelling of a trademark is confusingly similar to the relevant mark for purposes of the first element of the Policy (so called typosquatting). Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersion of other terms or numbers (see paragraph 1.9 WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition “WIPO Overview 3.0” and the decisions mentioned thereto).

UDRP panels also agree that the top-level suffix, in this case .com, is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the trademark of the Complainant as it is a technical requirement of registration (see paragraph 1.11.1 WIPO Overview 3.0 and the decisions mentioned thereto).

Hence, this Panel finds that the disputed domain name is confusingly similar to the Complainant's mark. The similarity of the disputed domain name to the Complainant's mark is likely to lead to confusion and/or association for the Internet users.

Accordingly, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy.

II. LACK OF RIGHTS OR LEGITIMATE INTERESTS

It is a consensus view of UDRP panels that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see paragraph 2.1

of the WIPO Overview 3.0 and the decisions mentioned thereto: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.")

The Respondent was identified by the registrar with the name <damendes>, located in the USA.

The Complainant has no relationship with the Respondent whatsoever.

The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's trademark or to register the disputed domain name.

There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name is a typosquatted version of the Complainant's well-known trademark and such practice, aimed to take advantage of the Internet users' typographical errors, evidences the Respondent's lack of rights and legitimate interests in the disputed domain name.

Moreover, the Respondent has been using the disputed domain name for sending e-mails, passing itself off as an employee of a division of the Complainant, in order to receive payments in place of the Complainant. Such use is certainly not a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel finds that the Complainant has established its prima facie case and the Respondent, in not formally responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name.

Thus, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy.

III. BAD FAITH REGISTRATION AND USE

The Respondent has registered the disputed domain name containing in its entirety the well-known trademark of the Complainant (ARCELORMITTAL) and adding the letters "L" and "T", creating in such way a likelihood of confusion with such mark. Considering the notoriety of the Complainant's activities and its mark worldwide, it is unlikely that the registration of the disputed domain name may be attributed to a mere chance and not, as is, with a full awareness and intent to exploit the reputation of the Complainant and its mark acquired in these years.

Moreover, on one hand the website associated to the disputed domain name is inactive, on the other hand the disputed domain name has been used in a phishing scheme. There is sufficient proof provided by the Complainant that the Respondent has been using the disputed domain name for sending e-mails, passing itself off as an employee of a division of the Complainant, in order to receive payments in place of the Complainant.

The employment of an intentional misspelling during the registration by the Respondent corroborated by the use of the disputed domain name for phishing activities shows the intention of the Respondent to confuse Internet users seeking or expecting the Complainant.

Thus, by registering and using the disputed domain name, 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 mark as to the source, sponsorship, affiliation, or endorsement of its website or a product or service on its website.

Taken into account all circumstances of this case, the Panel finds that the Complainant has discharged the burden of proof

to show that the disputed domain name has been registered and is being used in bad faith (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. **ARCELLORMITTTAL.COM**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2019-11-18

Publish the Decision