Decision for dispute CAC-UDRP-102774

Case number	CAC-UDRP-102774
Time of filing	2019-11-08 10:08:14
Domain names	mittalmexico.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Mittal Mexico

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant submitted evidence that it is the registered owner of the following trademark:

- International trademark registration n. 1198046 “MITTAL” (word trademark), which also covers Mexico, registered on 5 December 2013, valid for classes 6 and 40.

FACTUAL BACKGROUND

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

The Complainant (“ArcelorMittal”) is a steel producing company with headquarters in Luxembourg.

The Complainant asserts to be the largest steel producing company in the world and the global market leader in steel for use in automotive, construction, household appliances and packaging with operations in more than 60 countries.

The Complainant submitted evidence that it is the registered owner of the trademark mentioned above under "Identification of rights".

The Complainant further asserts that it is the owner of various domain names consisting of the word "MITTAL". The Complainant submitted evidence that it is the owner of the domain name <arcelormittal.com>, registered on 26 January 2006.

The disputed domain name was registered on 4 November 2019. The Complainant provided evidence that, at the time of filing the Complaint, the disputed domain name was not in use.

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

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
(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.

1. Identical or confusingly similar

The disputed domain name <mittalmexico.com> consists of the Complainant's registered trademark "MITTAL", with the addition of the geographical term "Mexico".

Numerous previous panels have accepted that the incorporation of a trademark in its entirety into a domain name is sufficient to establish that the disputed domain name is identical or confusingly similar to a registered trademark. Indeed, in most cases where a domain name incorporates the entirety of a trademark, the domain name is, for the purposes of the Policy, considered as confusingly similar to the trademark (see for example, the detailed discussion of this topic in Research in Motion Limited v. One Star Global LLC WIPO Case No. D2009-0227).

In this case, the Panel notes that the disputed domain name incorporates the entirety of the Complainant's "MITTAL" trademark.

The Panel finds that the addition of the geographic term "Mexico" does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy.

There is also the addition of the '.com' suffix, which also may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

The Panel 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 or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then has to weigh all the evidence, with the burden of proof always remaining on the Complainant.
The Panel notes that the Complainant contends that the Respondent was not authorised to use its trademark "MITTAL", or to apply for registration of the disputed domain name. The Complainant further argues that the Respondent is not related in any way to the Complainant and that the Complainant does not carry out any activity for, nor has any business with the Respondent. Lastly, the Complainant contends that it could not identify any company identified as "MITTAL MEXICO" located at the address displayed in the 'Whois' information of the disputed domain name, i.e. "Javier Barros Sierra S/N, 540" in Mexico.

The Respondent did not file an administratively compliant (or any) response. In such circumstances, the Panel finds from the facts put forward that:

The Respondent does not appear to have any rights or legitimate interests associated with the "MITTAL" trademark.

There is no evidence that the Respondent is commonly known by the "MITTAL" trademark. The Respondent does not seem to have any authorisation to use this trademark in the disputed domain name or otherwise.

There is no evidence that shows that the Respondent may have used the disputed domain name for any bona fide offering of goods or services of its own. The Complainant shows that, at the time of the filing of the Complaint, the disputed domain name was not in use.

There is no evidence to show that the Respondent is making 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 trademarks at issue.

The Respondent has not submitted any Response to the Complaint. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

The Panel finds that the Complainant did make a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel further finds that the Respondent failed to provide appropriate allegations or evidence

demonstrating rights or legitimate interests in the disputed domain name.

On the balance of probabilities, 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 any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii) of the Policy.

3. Bad faith registration and use

The Complainant asserts that its trademark “MITTAL” is well-known, and refers inter alia to other WIPO domain name decisions that confirmed the notoriety of its trademark, namely no. D2018-1086 and no. D2010-2049.

The Complainant contends that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The Complainant contends that the Respondent must have had the Complainant in mind when he registered the disputed domain name. The Complainant submitted evidence (screenshot of its corporate website) that it operates six facilities in three ports in Mexico, and maintains a corporate and sales office in Mexico City. The Complainant further contends that the disputed domain redirects to an error page (the Complainant submitted a screenshot of the website available through the disputed domain name).

The Panel finds that, on the balance of probabilities, it may be expected that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's “MITTAL” trademark and the scope of this trademark. The Panel points to the fact that the Complainant has trademark rights to the term “MITTAL” for metals and steel products. The registration of the Complainant’s "MITTAL" trademark predates the registration of the disputed domain name. The Respondent submitted an address in Mexico for the registration of the disputed domain name, while the Complainant’s international trademark covers the territory of Mexico. The term “MITTAL”, selected by the Respondent, seems to have no meaning in any language and seems selected only for its similarity to the Claimant’s registered “MITTAL” trademark. Indeed, the disputed domain name is identical to the Complainant's trademark "MITTAL", with the addition of the geographical term “Mexico”. The Panel believes that the disputed domain name might lead customers of the Complainant to believe that the disputed domain is owned by the Complainant, and is used to provide information regarding its above mentioned activities, offices and facilities of the Complainant in Mexico.

In light of this, it seems unlikely that the Respondent would not have been aware of the unlawful character of the disputed domain name at the time of its registration and use.

As a side consideration, the Panel adds that the fact that the disputed domain name redirects to an inactive page did, on itself, not weigh heavily in its assessment of bad faith. Indeed, the Complaint was filed merely 4 days after the registration date of the disputed domain. In general, the Panel is of the opinion that a Respondent should be given a reasonable amount of time to start using a domain name, without the inactive status of the domain name being used against him/her (this always depends on the specific circumstances of the case).

As a second side consideration, the Panel would have appreciated evidence of the date on which the Complainant made the screenshot of the webpage available via the disputed domain name.

In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the facts in this case and from the arguments formulated by the parties that the Respondent had the well-known "MITTAL" trademark of the Complainant in mind when registering and subsequently using the disputed domain name.

For all of the reasons set out above, 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. **MITTALMEXICO.COM**: Transferred

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2019-12-18

Publish the Decision