Decision for dispute CAC-UDRP-102823

Case number	CAC-UDRP-102823
Time of filing	2019-12-16 10:13:21
Domain names	arcelornmital.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	john Folwer

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

The Complainant is the owner of the International trademark ARCELORMITTAL with registration No.947686, registered on 3 August 2007 for goods and services in International Classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 (the “ARCELORMITTAL trademark”).

FACTUAL BACKGROUND

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

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

The Complainant’s official website is located at the domain name <arcelormittal.com>, registered on 27 January 2006.

The Respondent registered the disputed domain name on 10 December 2019. It does not resolve to an active website.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark in which the Complainant has rights, because the only differences between them are the addition of the letter “n” and the deletion of the letter “t”, and these differences are not sufficient to preclude a finding that the domain name is confusingly similar to the ARCELORMITTAL trademark. The disputed domain name contains an obvious misspelling of the Complainant’s trademark, which makes it a clear case of typosquatting.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has not been authorized by the Complainant to use the ARCELORMITTAL trademark and is not related to the Complainant, and the disputed domain name does not correspond to the name of the Respondent. The Complainant adds that the disputed domain name is a typosquatted version of the ARCELORMITTAL trademark, and was registered in an attempt to take advantage of Internet users’ typographical errors.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to the Complainant, the ARCELORMITTAL trademark is widely known around the world, and the Respondent chose and registered the disputed domain name, which is a misspelling of the ARCELORMITTAL trademark, with knowledge of this trademark and in order to make it confusingly similar to the trademark.

The Complainant points out that the website at the disputed domain name is currently inactive, and contends that it is not possible to conceive of any plausible active use of the disputed domain name by the Respondent that would not be illegitimate.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions and did not submit any arguments or evidence in its defence.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the 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 domain name; and

(iii) the respondent has registered and is using the domain name in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name …"

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the ARCELORMITTAL trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain ("gTLD") section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the ".com" gTLD section of the disputed domain name.

The relevant part of the disputed domain name is therefore the sequence "arcelornmital". The only differences between it and the ARCELORMITTAL trademark are the insertion of the letter "n" and the omission of the letter "t". These differences have a low effect on the overall impression made by the disputed domain name, and even with them, the ARCELORMITTAL trademark is still easily recognized in the disputed domain name, which makes the disputed domain name an example of typosquatting.

Taking all the above into account, the Panel finds that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has not been authorized by the Complainant to use the ARCELORMITTAL trademark and is not related to the Complainant, and the disputed domain name does not correspond to the name of the Respondent. According to the Complainant, the disputed domain name was registered in an attempt to take advantage of the typographical errors of Internet users searching for the Complainant. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a Response and has not alleged that is has rights and legitimate interests in the disputed domain name and has not disputed the Complainant's allegations and evidence in this proceeding.

The disputed domain name is confusingly similar to the Complainant's ARCELORMITTAL trademark, to its corporate name and to the domain name for its official website. It appears as a typical example of typosquatting, designed to mislead Internet users to believe that the disputed domain name refers to an official website of the Complainant. The Respondent has not provided any plausible explanation why it has chosen and registered the disputed domain name.

All the above leads the Panel to the conclusion that it is more likely than not that the Respondent, being aware of the goodwill of the Complainant an of the ARCELORMITTAL trademark, has registered the disputed domain name in an attempt to exploit this trademark's goodwill for financial gain. In the Panel's view, such activity is not legitimate and does not give rise to rights and legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

"(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The disputed domain name is confusingly similar to the ARCELORMITTAL trademark, to the Complainant's corporate name and to the domain name for its official website. In the absence of any evidence to the contrary, it appears as a typical example of typosquatting, designed to mislead Internet users to believe that the disputed domain name refers to an official website of the Complainant.

In view of the popularity and goodwill of the ARCELORMITTAL trademark and of the Complainant and of the disputed domain name being a typical example of typosquatting, it is not possible to conceive of any plausible active use of the disputed domain name by the Respondent that would not be illegitimate, and in any case the Respondent has provided no plausible reason for its choice of domain name and has not referred to any good faith use to which it may be put.

Taking the above into account, the Panel accepts that as more likely than not that the Respondent has registered the disputed domain name with knowledge of the Complainant and targeting the ARCELORMITTAL trademark in an attempt to extract commercial gain from the potential of the disputed domain name to mislead Internet users that it is related to the Complainant. This satisfies the Panel that the Complainant has established that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORNMITAL.COM**: Transferred

PANELLISTS

Name	**Assen Alexiev**

DATE OF PANEL DECISION 2020-01-24

Publish the Decision