Decision for dispute CAC-UDRP-102921

Case number	CAC-UDRP-102921
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Domain names	mittalferroalloys.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	liu shuai

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 has submitted evidence, which the Panel accepts, showing that it is the registered owner of the IR trademark MITTAL (Registration n°1198046) dated December 5, 2013.

Moreover, the Complainant is also the owner of the domain names bearing the sign “MITTAL” such as <mittalsteel.com> registration dated January 3, 2003.

FACTUAL BACKGROUND

The Complainant is a company specialized in steel producing for use in automotive, construction, household appliances and packaging. The Complainant operates in more than 60 countries and it holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant holds the international trademark registration for “MITTAL” (registration n°1198046) dated December 5, 2013 and the Complainant also holds domain names bearing “MITTAL” such as <mittalsteel.com> registration dated January 3, 2003.

On January 28, 2020, the Respondent registered the disputed domain name <mittalferroalloys.com>. The domain name is currently available on www.mittalferroalloys.com and being used as an online gaming and betting website.

On February 4, 2020, the Complainant sent a cease and desist letter to the Respondent.

The Respondent did not reply to the cease and desist letter sent by the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant is a company specialized in steel producing and is the leading company in its sector. The Complainant operates in more than 60 countries.

The Complainant holds international trademark registration for the trademark “MITTAL” and also is the owner of the domain names bearing the sign “MITTAL” such as <mittalsteel.com>.

1. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR

The disputed domain name is confusingly similar to the Complainant’s trademark “MITTAL ” as it bears the Complainant’s “MITTAL” trademark as a whole.

The Complainant alleges that the addition of the generic term “FERROALLOYS” is not sufficient to abolish the confusing similarity between the disputed domain name and the “MITTAL” trademark. Furthermore, the addition of the “FERROALLOYS” word even increases the likelihood of confusion since “FERROALLOYS” is an alloy of iron with one or more other metals used in the production of steel and accordingly it directly refers to the Complainant’s activity field.

Such attempts have been disapproved in various decisions e.g. WIPO Case No. D2018-1770, Credit Mutuel Arkea v. Sun Xiao Cheng.

The Complainant also alleges that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to the Complainant’s trademark “MITTAL”.

The Complainant refers to earlier Panel decision WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.

The Complainant states that many prior Panel decisions have accepted the Complainant’s rights such as:

- CAC Case No. 102464, ARCELORMITTAL (SA) v. Fundacion Comercio Electronico <mittalminerals.com>;
- CAC Case No. 102294, ArcelorMittal (SA) v. ANKIT ENTERPRISES <mittalmetal.com>, <mittal-metals.com>, <mittalmetalsltd.com>; and
- CAC Case No. 102186, ArcelorMittal (SA) v. david lopez <aceromittal.com>.

2. NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant states that the Respondent has no rights on the disputed domain name as the Respondent is not known as the disputed domain name but he is known as “Liu Shuai”. The past panel decisions e.g. 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 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii).") and Forum Case No. FA 699652, The Braun Corporation v. Wayne Loney, are precedents for the concrete case.

The Complainant also alleges that the Respondent has no rights to the disputed domain name since the Respondent has no relationship with Arcelormittal S.A. In fact, the Respondent and the Complainant do not carry out any activity or business together.

Moreover, the Complainant states that neither license nor authorization has been granted to the Respondent to use the Complainant's trademark "MITTAL".

The Complainant argues that the disputed domain name redirects to a login page of an online gaming and betting website. Thus, the Complainant argues that the Respondent is using the disputed domain name in a way that fails to confer rights and legitimate interests as it is used to promote unrelated services.

The Complainant refers to earlier Panel decision Forum Case No. FA1808541, Baylor University v. Pan Pan Chen / Chen Pan Pan. ("Complainant argues that Respondent uses the disputed domain name to offer services completely unrelated to those offered by Complainant. Using a confusingly similar domain to promote unrelated services can evince a lack of a bona fide offering of goods or services or legitimate noncommercial or fair use.").

3. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Complainant alleges that the disputed domain name is confusingly similar to the Complainant's distinctive trademark "MITTAL".

The Complainant states that the "MITTAL" is a widely known trademark and its notoriety has been accepted within the earlier decisions such as WIPO Case No. D2018-1086, ArcelorMittal S.A. v. Registrant of lakshmimittal.org, c/o WHOIStrustee.com Limited / Zeus Holding Market Ltd. ("The Domain Name wholly incorporates a well-known mark [MITTAL]") and WIPO Case No. D2010-2049, Arcelormittal v. Mesotek Software Solutions Pvt. Ltd. ("the Complainant's marks MITTAL and MITTAL STEEL have been widely used and are well-known.").

The Complainant asserts that the use of the term "FERROALLOYS" cannot be evaluated as a coincidence since "FERROALLOYS" is an alloy of iron with one or more other metals, used in the production of steel which is the Complainant's activity field.

The Complainant states that taking into account the distinctive character and the well-known status of the "MITTAL" trademark; the Respondent was aware of such trademark while registering the disputed domain name.

The Complainant alleges that the bad faith of the Respondent is supported within the fact that the Respondent never replied to the cease and desist letter sent by the Complainant on February 4, 2020.

The Complainant asserts that the disputed domain name resolves to an online gaming and betting website and accordingly the Respondent has an intention to attract the users for commercial gain.

The Complainant states that prior Panel decisions have accepted the bad faith of the Respondent in similar cases such as Forum Case No. FA893000, The Vanderbilt University v. U Incorporated. ("By diverting Internet users to its own website and promoting books unrelated to Complainant's university under the VANDERBILT mark, Respondent is taking advantage of the confusing similarity between the <vanderbilt.mobi> domain name and Complainant's VANDERBILT in order to profit from the goodwill associated with the mark, and that such registration and use constitutes bad faith under Policy 4(b)(iv).").

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

Paragraph 15 of the Rules provides that the Panel is to 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.

In this context, the Panel also notes that the burden of proof is on the Complainant to make out its case and past UDRP panels have consistently said that a Complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

B. the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

C. the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

A. IDENTICAL OR CONFUSINGLY SIMILAR

The Policy simply requires the Complainant to demonstrate that the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights. The Panel is satisfied that the Complainant is the owner of registration of the “MITTAL” trademark.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s “MITTAL” trademark since it contains the Complainant’s trademark as a whole at its beginning.

Further, the addition of the “FERROALLOYS” word is not enough to abolish the similarity as it is a generic term and moreover, it increases the confusion since the Complainant Arcelormittal S.A. operates in steel industry.

Moreover, the addition of the gTLD “.COM” is not enough to abolish the similarity.

The Panel is of the opinion that the Internet users will easily fall into false impression that the disputed domain name is an official domain name of the Complainant. The Panel recognizes the Complainant's rights and concludes that the disputed domain name is confusingly similar with the Complainant's trademark. Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.

B. NO RIGHTS OR LEGITIMATE INTERESTS

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is open to a Respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

(i) before any notice to the respondent of the dispute, the use or making demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent of the dispute (as an individual, business, or other organization) has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

(iii) the respondent of the dispute is making a legitimate non-commercial or fair use of the domain name, without an intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the disputed domain name, the Complainant will have failed to discharge its burden of proof and the Complaint will fail. The burden is on the Complainant to demonstrate a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name. Once the Complainant has made out a prima facie case, then the Respondent may, inter alia, by showing one of the above circumstances, demonstrate rights or legitimate interests in the disputed domain name.

The Complainant contends that the Respondent has nothing to do with the Complaint and any use of the trademark “MITTAL” has to be authorized by the Complainant and there is no such authorization. Moreover, the disputed domain name has no relation with the Respondent and the Respondent is not commonly known as the disputed domain name. Finally, the disputed domain name is being used as an online gaming and betting website which cannot be accepted as a fair or non-commercial use.

In the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant’s trademark in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain dame, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. BAD FAITH

The Panel concludes that the Complainant's “MITTAL” trademark has a significant reputation and is of distinctive character. Therefore, the Panel is of the opinion that due to the earlier rights of the Complainant in the “MITTAL” trademark and the associated domain names, the Respondent, was aware of the Complainant and its trademark at the time of registration of the disputed domain name (see e.g., Ebay Inc. v. Wangming, WIPO Case No. D2006-1107). Referring to Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net, WIPO Case No. D2000-0226, the Panel believes that the awareness of the

Complainant's trademark at the time of the registration of the disputed domain name is to be considered an inference of bad faith registration.

Moreover the Panel concludes that the addition of the term "FERROALLOYS" which directly refers to the Complainant's activity field and the Respondent's lack of response to the cease and desist letter sent by the Complainant demonstrate the bad faith of the Respondent.

Besides, the http://mittalferroalloys.com/ link resolves to an online gaming and betting website and shows the intention to divert the Internet users to its own website for unrelated services and to take advantage of the confusing similarity between the disputed domain name and the Complainant's "MITTAL" trademark in order to profit from the goodwill associated with the mark and that such registration and use constitutes bad faith under the Policy.

Therefore, in light of the above-mentioned circumstances in the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith and that the Complainant has established the third element under 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. **MITTALFERROALLOYS.COM**: Transferred

PANELLISTS

Name	**Mrs Selma Ünlü**

DATE OF PANEL DECISION 2020-04-01

Publish the Decision