Decision for dispute CAC-UDRP-103155

Case number	CAC-UDRP-103155
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Domain names	arceloromittal.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	ARCELORMITTAL S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Organization	kimAdams

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of the company name ARCELORMITTAL, the owner of International Registration No. 947686 ARCELORMITTAL, registered on 3 August 2007, and inter alia of the domain ARCELORMITTAL.COM, registered and in use since 27 January 2006.

FACTUAL BACKGROUND

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

The Complainant claims to be the proprietor of the trademark ARCELORMITTAL®, which is widely known.

The Complainant also contends that 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").

The Complainant further states that the misspelling of the trademark ARCELORMITTAL® was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith. 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).")

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

According to Paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to obtain an order that the Disputed domain name should be transferred or cancelled:

(i) the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed domain name; and

(iii) the Disputed domain name has been registered and is being used in bad faith.

The Panel has examined the evidence available to it and has come to the following conclusion concerning the satisfaction of the three elements of paragraph 4(a) of the Policy in these proceedings:

RIGHTS

The Disputed domain name is confusingly similar to the Complainant's Trademark, company name and domain <arcelormittal.com>. This finding is based on the well-established practice of disregarding the top-level suffix in the domain name (i.e. ".com") in determining the existence of a likelihood of confusion, and holding that in cases of mere typosquatting, where the domain name in question is a simple variation of a famous name, there is a likelihood of confusion due to the confusing similarity of the names.

Such typographical errors can easily be made by internet users, especially when languages which may not be the users' native language are involved. In this case, there is an obvious misspelling of the name, as the disputed domain name contains one additional letter “O” but is for the remainder identical to the name in question. The name “ARCELOROMITTAL” is certainly found to be similar to “ARCELORMITTAL”.

Decisions concerning typographical errors and typosquatting of the Complainant’s name were taken in the following similar UDRP cases:

- WIPO - D2016-1853 - Arcelormittal S.A. v. Cees Willemsen - <arclormittal.com> and <arelormittal.com>;
- CAC - 101265 - Arcelormittal v. Fetty wap LLc Inc - <arcelormitals.com>;
- CAC - 101267 - Arcelormittal v. davd anamo - <arcelormiltal.com>;
- CAC – 101804 – Acelormittal v. Marjorie Secrest - <arce1ormittal.com>.

A single additional letter in a word can lead to a finding of typosquatting as easily as an omitted letter, an exchanged letter or even a number, as can easily be seen when comparing the disputed domain name to the earlier right of the Complainant. The Panel comes to the conclusion that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

The onus to make out a prima facie case that the Respondent lacks rights or legitimate interests is placed on the Complainant. However, once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP which has been concluded e.g. in WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.

The Complainant has put forward that the Respondent is not commonly known by the disputed domain name. Neither is the Respondent in any way related to the Complainant, nor in any way authorized or issued with a license by the Complainant to use the disputed domain name. This has not been contested by the Respondent. Instead, the Respondent failed to provide any information or evidence whatsoever that could have shown that it has relevant rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a) (ii) of the Policy).

The absence of credible evidence of use or demonstrable preparation of use of the disputed domain name in connection with a bona fide offering of products or services demonstrates the lack of legitimate interests within the meaning of paragraph 4(a) (ii) of the Policy. This is supported by the finding in WIPO case No. D2000-1164, Boeing Co. v. Bressi, in which the Panel stated that the “Respondent has advanced no basis on which the Panel could conclude that it has a right or legitimate interest in the domain names”. The Complainant has put forward and the Panel has confirmed that the disputed domain name is not in use. It is a mere parking page.

The Panel also concludes that the Respondent did not establish any right or legitimate interest to the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy). The Complainants have therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

BAD FAITH

The Panel finds that the Complainant has established that the disputed domain name was registered by the Respondent and is being used by the Respondent in bad faith. For this purpose, the Complainant has successfully put forward prima facie evidence that the Respondent has not made use, or demonstrable preparations to use, of either the disputed domain name in connection with a bona fide offering of goods or services, or of making a legitimate non-commercial or fair use of the disputed domain name.

On the contrary, the evidence provided by the Complainant shows that the disputed domain name is not being used at all but is a mere parking page. Such lack of activity in conjunction with the failure to file a response cannot be sufficient to satisfy the burden of proving that no bad faith is involved.

Since the incorporation of a famous trademark into a domain name coupled with an inactive website may be considered to be evidence of bad faith registration and use, as was held e.g. in WIPO cases D2000-0003 - Telstra Corporation Limited v. Nuclear Marshmallows and D2000-0400 - CBS Broadcasting, Inc. v. Dennis Toeppen, the Complainant puts forward that Respondent has registered the Disputed domain name and is using it in bad faith.

The Panel agrees with this assessment and concludes that the Respondent has registered and is using the disputed domain name in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy). The Complainant has therefore also satisfied the requirement 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. **ARCELOROMITTAL.COM**: Transferred

PANELLISTS

Name	**Udo Pfleghar**

DATE OF PANEL DECISION 2020-08-21

Publish the Decision