Decision for dispute CAC-UDRP-103216

Case number	CAC-UDRP-103216
Time of filing	2020-08-06 10:34:09
Domain names	arcelonmittal.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL (SA)

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Name	Ndaa More

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the international trademark n° 947686 ARCELORMITTAL® registered on August 3, 2007.

The Complainant also owns the domain name <arcelormittal.com> registered since January 27, 2006.

FACTUAL BACKGROUND

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

ARCELORMITTAL S.A. (the Complainant) is a company specialized in steel production with a website at: www.arcelormittal.com.

The Complainant 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 89.9 million tonnes crude steel made in 2019. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The disputed domain name <arcelonmittal.com> was updated on July 28, 2020, The website related to this domain name is

inactive, but MX servers are configured.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant’s contentions can be summarised as follows:

The disputed domain name <arcelonmittal.com> is confusingly similar to its trademark ARCELORMITTAL®.

The misspelling of the Complainant’s trade mark in the domain name (the substitution of the letter “R” by the letter “N”) is not sufficient to escape the finding that the domain name is confusingly similar to the trademark ARCELORMITTAL®.

This is a clear case of "typosquatting“, i.e. the disputed domain name contains an obvious misspelling of the Complainant’s trademark. Previous panels have found that the slight spelling variations does not prevent a disputed domain name from being confusing similar to the Complainant’s trademark.

Please see prior UDRP cases:

- CAC Case No. 102360, ARCELORMITTAL (SA) v. Milton Liqours lLC <arcelornmittall.com>;

- CAC Case No. 102346, ARCELORMITTAL (SA) v. Sani Cermaic <acelormitall.com>;

- CAC Case No. 102319, ARCELORMITTAL (SA) v. Sheila Prince NA <arcelormiittall.com>.

It is well established that TLDs may typically be disregarded in the assessment under paragraph 4(a)(i) of the Policy when comparing disputed domain names and trademarks.

Please see WIPO Overview 3.0, section 1.11 (“The applicable Top Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.”).

Consequently, the disputed domain name <arcelonmittal.com> is confusingly similar to Complainant’s trademark ARCELORMITTAL®.

According to WIPO Case No. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd., the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such a prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Respondent is not commonly known by the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name.

Please see for instance 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).”).

The Respondent has no rights or legitimate interests in respect of the disputed domain name <arcelonmittal.com> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither licence nor authorization has been granted by the Complainant to the Respondent to make any use of the Complainant's trademark ARCELORMITTAL®, or apply for registration of the disputed domain name by the Complainant.

The disputed domain name is a typosquatted version of the trademark ARCELORMITTAL®. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can evidence that a respondent lacks rights and legitimate interests in a domain name.

Please see Forum Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group ("The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy 4(a)(ii).").

The disputed domain name does not resolve to an active web site.

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name <arcelonmittal.com>.

The Complainant's trademark ARCELORMITTAL® is widely known. 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.").

Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Please see WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell ("The Panel finds that the trademark ARCELORMITTAL is so well-known internationally for metals and steel production that it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it.").

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.

Please see 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 4(a)(iii).").

The disputed domain name does not resolve to an active web site, but MX servers are configured. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

Please see for instance:

- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

Respondent has registered and used the disputed domain name in bad faith.

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

The Complainant is the owner of the international trademark n° 947686 ARCELORMITTAL® registered on August 3, 2007.

The Complainant also owns the domain name <arcelormittal.com> registered since January 27, 2006.

The disputed domain name registered in 2020 is a misspelling of the Complainant's trade mark substituting the second letter r in that mark with a letter n. Substitution of a letter in a trade mark and/or adding the gTLD .com does not prevent confusing similarity between the disputed domain name and the Complainant's trade mark. The disputed domain name is, therefore, confusingly similar to the Complainant's mark.

The Respondent is not commonly known by the disputed domain name and is not authorised by the Complainant.

The disputed domain name does not resolve to an active web site and therefore there has been no bona fide offering of goods or services or legitimate non commercial or fair use.

The disputed domain name has been passively held. Typosquatting is bad faith per se and indicates knowledge of the Complainant and its rights on the part of the Respondent.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELONMITTAL.COM**: Transferred

PANELLISTS

Name	Dawn Osborne

DATE OF PANEL DECISION 2020-08-27

Publish the Decision