# Decision for dispute CAC-UDRP-103452

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| Case number | CAC-UDRP-103452 |
| Time of filing | 2020-12-15 10:40:25 |
| Domain names | arceloirmittal.com |

## Case administrator

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| Organization | Denisa Bilík (CAC) (Case admin) |

## Complainant

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| Organization | ARCELORMITTAL (SA) |

## Complainant representative

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| Organization | Nameshield (Enora Millocheau) |

## Respondent

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| Name | Frank |

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

• International trade mark registration no. 947686, dated 3 August 2007, for the word mark ARCELORMITTAL, in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 of the Nice Classification.

FACTUAL BACKGROUND

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

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant states that it 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.

In addition to the trade mark mentioned above, the Complainant cites previous UDRP decisions (CAC and WIPO) which found ARCELORMITTAL to be well-known and highly distinctive. In addition, the Complainant also owns a number of domain names, including <arcelormittal.com>, which was registered on 27 January 2006.

The disputed domain name <arceloirmittal.com> was registered on 3 December 2020. The website is currently inactive although the MX servers are configured.

The Complainant avers that the disputed domain name is confusingly similar to the Complainant's trade mark ARCELORMITTAL. The addition of the letter "i" to the trade mark ARCELORMITTAL is insufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trade mark. This is a clear case of "typosquatting", a practice in which the domain name contains obvious misspellings of a complainant's trade mark.

Relying on previous CAC decisions, the Complainant contends that UDRP panels have decided that slight spelling variations do not prevent a finding of confusing similarity under the Policy. The Complainant also references the WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Jurisprudential Overview 3.0), paragraph 1.11, to support its claim that the Top-Level Domain (TLD) suffix (".com") is typically disregarded in the assessment under paragraph 4(a) of the Policy when comparing disputed domain names and trade marks.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. There is no contractual arrangement between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark, or to apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant also asserts that the Respondent is not known by the disputed domain name. On the contrary, the disputed domain name is a typosquatted version of the Complainant's ARCELORMITTAL trade mark, and such practice evidences the Respondent's lack of rights or legitimate interests in connection with the disputed domain name.

Lastly, the Complainant argues that the disputed domain name is currently inactive, and that the Respondent did not make any use of the disputed domain name since its registration. This confirms that the Respondent has no demonstrable plan to use the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant asserts that the misspelling of the ARCELORMITTAL trade mark is evidence of bad faith registration and use.
Moreover, the disputed domain name is currently inactive and MX servers are configured. The Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive any plausible actual or contemplated active use of the disputed domain name that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law.

Finally, the Complainant cites WIPO UDRP panels to support its contention that the incorporation of a famous trade mark into a domain name, coupled with an active website, may be evidence of bad faith registration and use.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

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 Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain name:

i. The disputed 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 disputed domain name; and

iii. The disputed domain name has been registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three Policy elements in turn.

I. Identical or Confusingly Similar

The UDRP test under the first element provides for a juxtaposing approach, according to which the textual components of the disputed domain name and the Complainant's trade mark are to be compared side by side.

In order to succeed under the first element of the Policy, the Complainant must provide evidence that it has rights in a trade mark or service mark, following which the Panel shall assess whether or not the disputed domain name is identical or confusingly similar to the Complainant's trade mark(s).

Upon review of the case file, the Panel is satisfied that the Complainant has trade mark rights in the term ARCELORMITTAL, dating back to at least 2007.

The disputed domain name is <arceloirmittal.com>. The Complainant's trade mark ARCELORMITTAL is wholly incorporated in the disputed domain name. The Panel notes that the disputed domain name, put side by side with the Complainant's trade mark ARCELORMITTAL, contains an additional letter "i" between the letters "o" and "r" in the term "ARCELOIR". The disputed domain name contains the term "ARCELOIR" as compared with the Complainant's relevant portion "ARCELOR" of its trade mark. The Panel takes the view that the letter "i", as positioned in the disputed domain name string, is rather immaterial to produce any distinctive character and, therefore, insufficient to dispel the visual and phonetic confusion between the term "ARCELOIRMITTAL" (disputed domain name) and "ARCELORMITTAL" (the Complainant's trade mark) (see e.g. WIPO Jurisprudential Overview 3.0, paragraph 1.9; Fuji Photo Film U.S.A., Inc. v LaPorte Holdings, WIPO Case No. D2004-0971; and

CAC Case No. 103219, ARCELORMITTAL (SA) v Sheila Prince NA).

The Panel further notes that TLD suffixes are typically disregarded in the assessment of the first element of the Policy. The reason for that is because a TLD is part of the anatomy of a domain name, being the last component positioned right after the final dot (e.g. ".com", ".org", ".net") (see WIPO Jurisprudential Overview 3.0, paragraph 1.11).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trade mark ARCELORMITTAL, the result of which being that the Complainant has succeeded under the requirement of paragraph 4(a)(i) of the Policy.

II. Rights or Legitimate Interests

The second element of the Policy provides that the Respondent shall demonstrate that it has rights or legitimate interests in the disputed domain name. It therefore falls on the Complainant the burden to refute any such allegations.

Paragraph 4(c) of the Policy sets out a non-exhaustive list of examples by which the Respondent can demonstrate its rights or legitimate interests in the disputed domain name, as follows:

(i) before any notice of the dispute, the respondent's use of, or 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 (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

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

The evidentiary standard under the UDRP proceedings is such that, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production shifts to the respondent to provide evidence to the contrary.

The Respondent did not submit a Response in these UDRP proceedings. Therefore, the Panel will make a determination on the basis of the available evidence.

Having reviewed the case file, the Panel notes that the Respondent does not carry out any activity for, or has any business or relationship of any future with, the Complainant. The Complainant has not authorised the Respondent to make any use of the Complainant's trade mark ARCELORMITTAL, and there is no evidence on the record to suggest that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is of the view that the evidence on the available record does not demonstrate that before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services. In addition, the available record does not demonstrate 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.

The Panel notes that there is also no evidence on record to suggest that the Respondent is affiliated with, or endorsed by, the Complainant (and, in any event, any affiliation or endorsement has been denied by the Complainant).

Moreover, the choice of a domain name which incorporates a complainant's trade mark is further evidence of lack of rights or legitimate interests (WIPO Jurisprudential Overview 3.0, paragraph 2.4).

For the foregoing reasons, and noting that the Respondent has not provided a Response to refute any of the allegations and

evidence produced by the Complainant in these proceedings, the Panel finds that the Complainant has made a prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the Policy.

III. Registered and Used in Bad Faith

In order to meet the third requirement under the Policy, the Complainant must provide evidence that the disputed domain name was registered and is being used in bad faith.

The Policy enumerates non-exhaustive circumstances which would evidence bad faith registration and use of a domain name, as follows:

1. circumstances indicating that the respondent has registered or has 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

2. the respondent has 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

3. the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

4. by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

The Panel has considered the evidence put forward by the Complainant. The Panel takes the view that the circumstances in this case which are material to the assessment of bad faith registration and use are intertwined and, as such, will be dealt with by the Panel concurrently.

The Panel lists below a number of indicia which points in the direction of the Respondent's bad faith registration and use of the disputed domain name under the Policy:

• The disputed domain name wholly incorporates the Complainant's trade mark. The Panel notes that the additional letter "i" is adjacent on certain keyboard layouts to the letter "o". The Panel finds that the inclusion of the keyboard letter "i" does not dispel the overall visual and phonetic confusion between the disputed domain name and the Complainant's trade mark ARCELORMITTAL;

• There is no credible explanation for the Respondent's choice of the disputed domain name, which was registered in December 2020, bearing in mind that the Complainant has been in operation since 2006. The Panel also notes that the Complainant owns the almost identical domain name <arcelormittal.com>, which was registered in 2006. Therefore, the Panel does not look sympathetically to the Respondent, and finds it highly unlikely that the Respondent was not aware of the Complainant's prior rights in the trade mark ARCELORMITTAL at the time of registering the disputed domain name, given the Complainant's reputation, which the Panel accepts;

• The Respondent has not provided a Response within the time prescribed under the UDRP Rules, or at all, and has thus failed to offer any explanation of justification to the matters raised by the Complainant in the context of these proceedings. The Panel is empowered to draw adverse inferences by such failure (UDRP Rule 14 (b));

• There is nothing on the record suggesting that the Respondent is affiliated or otherwise connected with the Complainant and the Complainant denies any association;

• UDRP panels have found that a typo of a widely-known trade mark can by itself create a presumption of bad faith (WIPO Jurisprudential Overview 3.0, paragraph 3.1.4), and the Panel accepts that the Complainant's trade mark is widely known; and

• The Panel considers that the case circumstances warrant a finding of bad faith under the passive holding doctrine (see e.g. Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). Having considered the totality of the circumstances, the reasons for this include, most compellingly (i) the degree of reputation of the Complainant's trade mark; (ii) the Complainant's trade mark registration and use of an almost identical domain name <arcelormittal.com> for nearly 15 years before the Respondent's registration of the disputed domain name; (iii) the failure of the Respondent to submit a Response or provide any evidence of actual or contemplated good faith use of the disputed domain name; (iv) the Respondent's enabling of the email function of the disputed domain name, which suggests that the Respondent might have intended to use the disputed domain name as a vehicle for a fraudulent commercial venture; and (v) the overall unlikeliness of any good faith use of the disputed domain name.

The Panel is of the view that, taken together, the above are compelling indicia that the Respondent has registered and is using the disputed domain name in bad faith under the Policy.

Accordingly, the Panel finds that the Complainant has made a prima facie showing that the Respondent has registered and is using 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. **ARCELOIRMITTAL.COM**: Transferred

## PANELLISTS

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| Name | **Dr Gustavo Moser** |

DATE OF PANEL DECISION 2021-01-11

Publish the Decision