

Decision for dispute CAC-UDRP-103733

Case number	CAC-UDRP-103733
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Time of filing	2021-04-14 10:49:29
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Domain names	arcelornital.com
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Case administrator

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

Organization	ARCELORMITTAL S.A.
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Complainant representative

Organization	Nameshield (Laurent Becker)
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Respondent

Name	Eleven Xie
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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 - ARCELOR MITTAL S.A. - relies on international verbal trademark no. 947686 <ArcelorMittal> registered on 3 August 2007 for goods/services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41, 42, designating amongst others the European Union and the United States of America, where the Respondent indicates to be located.

FACTUAL BACKGROUND

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

The disputed domain name <arcelornital.com> has been registered on 7 April 2020.

The disputed domain name does currently not resolve to any active website but to a default site. In addition, it results from the Complainant's undisputed allegations that MX servers are configured to the disputed domain name.

Finally, the Complainant states that the Respondent is not affiliated with the Complainant. Furthermore, the Complainant did not grant any licence or authorization to the Respondent to make any use, or apply for registration of the disputed domain name.

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

1.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Many panels have found that a domain name is confusingly similar to a complainant's trademark where it incorporates the complainant's trademark in its entirety. It is true that in the case at hand, the Complainant's registered trademark <ArcelorMittal> is not fully included in the disputed domain name. However, merely replacing the "M" with an "n" and omitting a "t" results to be an irrelevant minor variation and an obvious misspelling of the Complainant's mark <ArcelorMittal> and is at least phonetically not enough to exclude confusing similarity. In fact, a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (see point 1.9 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition - "WIPO Jurisprudential Overview 3.0").

2.

In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular, the Respondent is not affiliated with, nor authorized by the Complainant in any way, and it is not related in any way to the Complainant's business. In addition, the Respondent is not commonly known by the disputed domain name pursuant to paragraph 4(c)(ii) of the Policy.

Finally, no content is displayed on the website to which the disputed domain name resolves. Such use can neither be considered a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

3.

Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

It is the view of this Panel that the Respondent has intentionally registered the disputed domain name, which almost identically reproduces the Complainant's trademark. By the time the disputed domain name was registered, it is unlikely that the Respondent did not have knowledge of the Complainant's rights on its trademark.

In addition, the Panel considers that the fact that the disputed domain name resolves to an inactive webpage does not prevent a finding of bad faith. In this regard, this Panel shares the view expressed at point 3.3. in the WIPO Jurisprudential Overview 3.0: "From the inception of the UDRP, panellists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panellists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put". In the case at hand, the Panel takes into consideration not only (1) the distinctiveness of the Complainant's trademark, but also (2) the clear absence of rights or legitimate interests coupled with no response to the Complaint with conceivable or credible explanations of the Respondent's conduct, (3) the implausibility of any good faith use to which the disputed domain name may be put and (4) the fact that the Respondent originally used a privacy service to hide its identity.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORNITAL.COM**: Transferred

PANELLISTS

Name	Dr. Tobias Malte Müller
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DATE OF PANEL DECISION 2021-05-25

Publish the Decision