

## Decision for dispute CAC-UDRP-103893

Case number CAC-UDRP-103893

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Time of filing 2021-06-30 09:06:21

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Domain names arcelormittal.cam

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### Case administrator

Organization Denisa Bilík (CAC) (Case admin)

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### Complainant

Organization ARCELORMITTAL (SA)

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### Complainant representative

Organization Nameshield (Enora Millocheau)

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### Respondent

Organization Ad Infinitum

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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.

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#### IDENTIFICATION OF RIGHTS

Complainant holds the following trademark for the sign ARCELORMITTAL:

- International trademark "ArcelorMittal" No. 947686, registered on August 3, 2007 for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

Complainant also operates the domain name <arcelormittal.com> registered since January 26, 2006, updated on January 25, 2021.

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#### FACTUAL BACKGROUND

Complainant is the world's leading steel and mining company and is the market leader in steel for use in automotive, constructions, household appliances and packaging. Complainant is also the largest steel manufacturer in North America, South America and Europe.

On June 22, 2021, Respondent registered the disputed domain name <arcelormittal.cam> which resolves to a parking page,

with configured MX servers.

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#### PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

- Complainant argues that the disputed domain name is identical to its ARCELORMITTAL trademark.

Complainant emphasizes that the addition of the gTLD “.CAM” is not sufficient to escape the finding that the disputed domain name is identical to the Complainant’s trademark, and does not change the overall impression of the designation as being connected to its trademark.

- Complainant further asserts that Respondent does not have any rights or legitimate interests in the disputed domain name.

Complainant recalls that it must make a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name, and that once such case is made, Respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name.

Complainant relies on the available Whois information and argues that Respondent is not commonly known under the disputed domain name.

Moreover, Complainant asserts that the Respondent is not related to the Complainant in any way, and that it does not carry out any activity for, nor has business with the Respondent. Complainant also emphasizes that Respondent was never granted neither license nor authorization to make any use of the Complainant’s trademark ARCELORMITTAL, or apply for registration of the disputed domain name.

Finally, the disputed domain name resolves to a parking page which, according to Complainant, confirms that Respondent has no demonstrable plan to use the disputed domain name, and demonstrates a lack of legitimate interests in respect of the disputed domain name.

- Complaint finally comes down to the conclusion that Respondent’s registration and use of the disputed domain name amounts to bad faith.

First, Complainant emphasizes the confusing similarity of the disputed domain name <arcelormittal.cam> with its trademark ARCELORMITTAL, that prior Panels have considered to be well-known, to show that Respondent registered the disputed domain name with full knowledge of the Complainant’s trademark and thus in bad faith.

Besides, Complainant states that Respondent’s use of the disputed domain name through a parking page cannot amount to a legitimate use, especially as Respondent has not demonstrated any activity in respect of the disputed domain name, and assimilates it to passive holding, which is evidence that Respondent is using the disputed domain name in bad faith.

Finally, Complainant contends that MX servers are configured which suggest that the disputed domain name may be actively used for email purposes.

RESPONDENT:

Respondent did not provide any response to the complaint, and is therefore in default.

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#### RIGHTS

## PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires the Complainant to prove three elements in order to the transfer of the domain name:

- (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.

## RIGHTS

Complainant shown it has valid trademark rights in the “ARCELORMITTAL” sign.

The Panel agrees and considers Complainant’s trademark rights in the sign ARCELORMITTAL are established.

The Panel also agrees that the disputed domain name is confusingly similar to the disputed domain name as it identically reproduces Complainant’s trademark “ARCELORMITTAL”, with the addition of the gTLD “.CAM” which do not permit to discard the likelihood of confusion with the “ARCELORMITTAL” trademark.

Under Policy 4(a)(i), top-level domains are indeed generally disregarded in the similarity test, see LABORATOIRES MAYOLY SPINDLER v. Peter West, Case n°101934 (CAC March 23, 2018) “As to whether the disputed domain name is identical or confusingly similar to the MAYOLY SPINDLER Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., “mayolyspindlerpharma”) because “[t]he 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.” WIPO Overview of WIPO Overview 3.0, section 1.11.1.”

As a result, the Panel finds that Complainant has satisfied Policy 4(a)(i).

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## NO RIGHTS OR LEGITIMATE INTERESTS

Complainant shall make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name, under Policy 4(a)(ii). The burden of proof then shifts to Respondent. This standard and burden of proof have been established through continuous case law, see CREDIT MUTUEL ARKEA v. Domain Administration, Case No 102345 (CAC February 8, 2019) “The Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such 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 UDRP.”

Complainant asserts that, based on the available Whois information, Respondent is not commonly known under the disputed domain name. Previous Panels have relied on such finding to conclude that Respondent lacks rights or legitimate interests in the disputed domain name in this situation, see AMUNDI ASSET MANAGEMENT v. NULL NULL, Case No. 102393 (CAC March 14, 2019) “The Respondent has no rights or legitimate interests in the disputed domain name, since there is no indication that the Respondent is commonly known by the term “AMUNDI”.

Complainant further argues that Respondent has never been allowed by Complainant to use the Complainant’s trademark ARCELORMITTAL nor apply for registration of the disputed domain name. Besides, Complainant alleges that Respondent is not related in any way with the Complainant, and that it does not carry out any activity for, nor has any business with the Respondent. Previous Panels have found that these circumstances were evidence that Respondent lacked rights or legitimate interests in the disputed domain name, see QUESTRA INC. v. MARVELOUS MARVIN, HASCONTRACTS, WIPO Case No. D2020-0633, “The Complainant has made unrebutted assertions that is has not granted any authorization to the Respondent to use the Complainant’s trademark. Based on the evidence, the Respondent is not affiliated or related to the Complainant in any way. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered rights. (...) The Panel finds the Respondent has no rights or legitimate interests in respect of the

Domain Name in accordance with paragraph 4(a)(ii) of the Policy.”.

Complainant further asserts that the disputed domain name resolves to a parking page, which cannot be considered as a proper use by Respondent. Previous Panels have found that such behaviour was evidence that Respondent does not have rights nor legitimate interests in the disputed domain name, see *Dagbladet Børsen A/S v. Laurent Mermet*, WIPO Case No. D2016-1814, November 7, 2016, “The Disputed Domain Name currently resolves to a parking page which contains links. Pursuant to paragraph 2.6 of the WIPO Overview 2.0, use of a domain name to post parking pages or pay-per-click links “may be permissible in some circumstances, but would not of itself confer rights or legitimate interests arising from a ‘bona fide offering of goods or services’...or from ‘legitimate noncommercial or fair use’ of the domain name, especially where resulting in a connection to goods or services competitive with those of the rights holder.” A common example of where use of a domain name to resolve to a parking page may amount to a right or legitimate interest, is where the pay-per-click links genuinely relate to the generic meaning of the domain name and the respondent had no intention of targeting the complainant (see *National Trust for Historic Preservation v. Barry Preston*, WIPO Case No. D2005-0424).”. Consequently, the Panel finds that Respondent does not use the domain name in connection to any bona fide offering of goods or services.

Finally, Respondent did not reply to the complaint to defend its registration of the disputed domain name. Under these circumstances, many Panels have found that those facts were generally evidence that Respondent lacks rights or legitimate interests in the disputed domain name, see *Vivendi v. (gongning)*, WIPO Case No. D2020-0740, “The absence of substantive response and evidence by the Respondent to the Complainant’s contentions and the fact that the Respondent was granted neither a license nor an authorization to make any use of the Complainant’s trademark, lead the Panel to find the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain names.”.

Therefore, the Panel concludes that Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name and has therefore satisfied Policy 4(a)(ii).

#### BAD FAITH

Complainant argues that given the distinctiveness and reputation of its trademark, Respondent could not ignore Complainant’s prior rights at the time of the registration of the disputed domain name.

Case law has previously held that when a respondent registered a domain name confusingly similar to the complainant’s well-known trademark, it was evidence that the respondent registered this domain name in bad faith see *Intesa Sanpaolo S.p.A v. Abayomi Ajileye*, Case No. 102396 (CAC March 19, 2019) “This Panel highlights that, according to paragraph 2 of the Policy, it is the Respondent’s responsibility to determine whether the domain name registration infringes or violates third party’s rights (“By applying to register a domain name, or by asking us to maintain or renew a domain name registration, you hereby represent and warrant to us that (a) the statements that you made in your Registration Agreement are complete and accurate; (b) to your knowledge, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party; (c) you are not registering the domain name for an unlawful purpose; and (d) you will not knowingly use the domain name in violation of any applicable laws or regulations. It is your responsibility to determine whether your domain name registration infringes or violates someone else’s rights”). By registering the disputed domain name confusingly similar with the Complainant’s well-known mark, the Respondent has violated, inter alia, the cited provision of the Policy.”.

The Panel acknowledges the well-known nature of the “ARCELOMITTAL” trademark in the field of steel production and commerce for use in automotive and construction. Therefore, Respondent could not ignore Complainant’s rights at the time of registration.

The Panel concludes that Respondent registered the disputed domain name <arcelormittal.cam> in bad faith.

As regards use of the disputed domain name, Complainant further asserts that Respondent did not use the disputed domain name, a mere parking page amounting to passive holding. The Panel agrees that the default parking page set up on the disputed domain name does not prove any intention or effort to use the disputed domain name, and can in this case be considered as passive holding.

Previous panels have found such behaviour as constituting use in bad faith part of a domain name, see *Tesla Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003, February 8, 2000, "The Administrative Panel has considered whether, in the circumstances of this particular Complaint, the passive holding of the domain name by the Respondent amounts to the Respondent acting in bad faith. It concludes that it does. The particular circumstances of this case which lead to this conclusion are: (i) the Complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use in Australia and in other countries, (ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name, (iii) the Respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name, (iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and (v) taking into account all of the above, 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 by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. In light of these particular circumstances, the Administrative Panel concludes that the Respondent's passive holding of the domain name in this particular case satisfies the requirement of paragraph 4(a)(iii) that the domain name "is being used in bad faith" by Respondent."

Finally, Complainant outlines that MX servers are configured, which suggests that the disputed domain name may be actively used for email purposes. Previous Panels found that this behaviour constituted evidence of Respondent's use in bad faith, see *Bouygues v. Name Redacted*, WIPO Case No. D2021-1666, July 8, 2021, "Furthermore, the Panel notes that previous UDRP panels inferred a bad faith behavior from the activation of MX-servers by the respondent, which enable the creation of email addresses for commercial emailing, spamming or phishing purposes (see *Robertet SA v. Marie Claude Holler*, WIPO Case No. D2018-1878)."

The Panel therefore considers that the disputed domain name is also being used in bad faith, within the meaning of paragraph 4(a)(iii) of the Policy.

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

Complainant holds trademark rights for the ARCELORMITTAL sign. The disputed domain name is reproducing Complainant's trademark. Respondent failed to establish legitimate rights or legitimate interests in the disputed domain name. Complainant has established that Respondent registered and uses the disputed domain name in bad faith.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITTAL.CAM**: Transferred

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## PANELLISTS

Name	<b>Nathalie Dreyfus</b>
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DATE OF PANEL DECISION 2021-07-30

Publish the Decision

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