

Decision for dispute CAC-UDRP-103969

Case number	CAC-UDRP-103969
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Time of filing	2021-08-12 09:16:32
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Domain names	mxarcelormital.com
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Case administrator

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

Organization	ARCELOMITTAL (SA)
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	ruby diamond
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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 trades under the company name ARCELOMITTAL, and is the owner of inter alia International Registration No. 947686 ARCELOMITTAL, registered on 3 August 2007, and of the domain <ARCELOMITTAL.COM>, registered and in use since 27 January 2006.

FACTUAL BACKGROUND

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

ARCELOMITTAL S.A. (the Complainant) is a global group of companies specialized in producing steel.

The Complainant is the largest company of this kind in the world and is the market leader in steel for use in automotive, construction, household appliances and packaging with 71.5 million tonnes crude steel made in 2020. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

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

The Complainant also owns an important domain names portfolio, such as the domain name <arcelormittal.com> registered since 27 January 2006.

The disputed domain name <mxarcelormital.com> was registered on 1 August 2021 and resolves to a page without substantial content. Besides, MX servers are configured.

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, a complainant is required to prove each of the following three elements to obtain an order that a domain name should be transferred or cancelled:

- (i) the 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 domain name; and
- (iii) the 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 and company name ARCELORMITTAL and the domain name <arcelormittal.com>. This finding is based on a well-established practice in evaluating the existence of a likelihood of confusion:

1) Disregarding the top-level suffix in the domain name (i.e. ".com") (See e.g. WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. where the Panel stated: "It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar."); and

2) Holding that omissions of single letters or the addition of generic or other non-distinctive terms to distinctive names and trademarks do not prevent a likelihood of confusion from arising.

Typographical errors can easily be made by internet users. In this case, there is an obvious misspelling of the name, as the disputed domain name lacks the second letter “T” in the name ARCELORMITTAL.

Instead, the letters “MX” (for “Mexico”) have been added to the name as a prefix. MX is the international abbreviation for Mexico in accordance with the system of two-letter country codes and country abbreviations ISO-3166-1 ALPHA-2. This is a widely known fact. The addition of a country code to the registered mark does not appear to remove the risk of a likelihood of confusion. Even without analyzing or dissecting the disputed domain name, the name ARCELORMITTAL is clearly recognizable. There is no other logical reason for combining these letters in this order and it is highly unlikely that the order was the result of pure chance. The differences are therefore not sufficient to prevent finding that the disputed domain name is confusingly similar to the trademark ARCELORMITTAL.

Decisions about typographical errors and typosquatting regarding the earlier rights in question were taken in the following similar UDRP cases:

- WIPO No. D2016-1853 - Arcelormittal S.A. v. Cees Willemsen - <arclormittal.com> and <arelormittal.com>;
- CAC No. 101265 - Arcelormittal v. Fetty wap LLC Inc - <arcelormittals.com>;
- CAC No. 101267 - Arcelormittal v. davd anamo - <arcelormittal.com>;
- CAC No. 101804 - Arcelormittal v. Marjorie Secrest - <arce1ormittal.com>.

In CAC Case No. 102470, ARCELORMITTAL (SA) v. acero, concerning the domain name <arcelormitalmexico.com>, a case where the second letter “T” in ARCELORMITTAL was also omitted, the Panel stated the Disputed domain name was nearly identical to the Complainant’s “ARCELORMITTAL” trademark since the deletion of the letter ‘T’ was not sufficient to prevent a likelihood of confusion.

The decision also supports the finding that country names and, in this particular case, the name “Mexico” as a geographic term may be disregarded in the comparison of the names and signs. The Panel held that “the addition of the “MEXICO” word is not enough to abolish the similarity as it is a geographic term and moreover, it increases the confusion since the Complainant Arcelormittal S.A. operates in Mexico. [...] Therefore, the Panel concludes that the requirements of paragraph 4(a)(i) of the Policy is provided.” This applies equally to an internationally known and widely used abbreviation for a country name, such as MX for Mexico.

The Panel therefore concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

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 a prima facie case is made, a respondent carries the burden of demonstrating rights or legitimate interests in a domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy, 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 Panel therefore 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 Complainant has 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 instead inactive. Such inactivity in conjunction with the failure to file a response cannot be sufficient to satisfy the burden of proving that no bad faith is involved.

The Respondent is located in Yucatan, Mexico, and the Complainant is active in business in Mexico where it operates its website under the domain name <mexico.arcelormittal.com>. As a result, the Panel finds it most unlikely that the Respondent was unaware of the name when the disputed domain name was registered.

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 argues that the Respondent has registered the disputed domain name and is using it in bad faith. This was confirmed in CAC case 101804 *ArcelorMittal v. Marjorie Secrest*, <arce1ormittal.com>.

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. **MXARCELORMITAL.COM**: Transferred

PANELLISTS

Name	Udo Pfléggar, B.A.
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DATE OF PANEL DECISION 2021-09-10

Publish the Decision