

## Decision for dispute CAC-UDRP-104101

Case number CAC-UDRP-104101

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Domain names arcebrmittal.com

### Case administrator

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

### Complainant

Organization ARCELORMITTAL (SA)

### Complainant representative

Organization NAMESHIELD S.A.S.

### Respondent

Name JOSE JULIO

#### 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

According to the Complainant, ARCELORMITTAL S.A. 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 71.5 million tonnes crude steel made in 2020. It holds sizeable captive supplies of raw materials and operates extensive distribution networks."

The Complainant states and provides evidence to support, that it is the owner of international trademark registration n° 947686 ARCELORMITTAL (registered on August 3, 2007), predating the date of registration of the disputed domain name.

The Complainant further states that it also owns an important domain names portfolio, including the same distinctive wording "ARCELORMITTAL", such as the domain name <arcelormittal.com> registered since January 27, 2006.

#### FACTUAL BACKGROUND

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

- WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted <arcelormittal.com> ("As the disputed

domain name differs from the Complainant's trademark by just two letters, it must be considered a prototypical example of typosquatting – which intentionally takes advantage of Internet users that inadvertently type an incorrect address (often a misspelling of the complainant's trademark) when seeking to access the trademark owner's website. WIPO Overview 3.0 at section 1.9 states that “[a] domain name which consists of a common, obvious, or misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”).

Complainant refers to:

- 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).”);
- 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).”);
- 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.”);
- 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.”);
- Forum Case No. FA 877979, Microsoft Corporation v. Domain Registration Philippines (“In addition, Respondent's misspelling of Complainant's MICROSOFT mark in the <microsoft.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).”);
- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen;
- CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono (“There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”).

PARTIES' CONTENTIONS:

COMPLAINANT:

- The disputed domain name is confusingly similar to the protected mark

According to the Complainant, the disputed domain name <arcebrmittal.com> is confusingly similar to its trademark ARCELORMITTAL. The Complainant contends that the obvious misspelling of the Complainant's trademark ARCELORMITTAL, i.e. the substitution of the letters “L” and “O” by the letter “B”, is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. Previous

panels have found that the slight spelling variations do not prevent a domain name from being confusingly similar to the Complainant's trademark.

Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

- Respondent does not have any rights or legitimate interest in the disputed domain name

The Complainant states that the Respondent has no rights or legitimate interests in respect of the domain name and it 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 license nor authorization has been granted 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 Complainant also claims that 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 the domain name.

In addition, the disputed domain name redirects to an index page. The Complainant contends that the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, or a legitimate non-commercial or fair use of it.

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

According to the Complainant, the Respondent has registered the disputed domain name and is using it in bad faith. The Complainant contends that the disputed domain name <arcebrmittal.com> is confusingly similar to its distinctive trademark ARCELORMITTAL.

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

Also, the Complainant states the misspelling of the trademark ARCELORMITTAL was intentionally designed to be confusingly similar with the Complainant's trademark.

In addition, the disputed domain name resolves to an index page. 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 disputed 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.

Finally, although the disputed domain name appears to be unused, it has been set up with MX records which suggests that it may be actively used for e-mail purposes.

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PARTIES CONTENTIONS

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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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).

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#### 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).

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#### 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).

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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

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the "Policy") provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent's domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and
2. that respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith.

1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Complainant has provided evidence and proved to be the owner of international trademark ARCELORMITTAL. Essentially, the Respondent has appropriated the trademark ARCELORMITTAL by substituting letters "L" and "O" by the letter "B" to presumably create confusing similarity between the Complainant's trademark and the disputed domain name <arcebrmittal.com> and to lead consumers to believe that it is affiliated with the Complainant.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark ARCELORMITTAL since the mere substitution of the letters "L" and "O" by the letter "B" does not eliminate any confusing similarity. This is especially true where, as here, the trademark is "the dominant portion of the domain name," LEGO Juris A/S v. Domain Tech Enterprises, WIPO Case No. D2011-2286, or where the trademark in the domain name represents "the most prominent part of the disputed domain name[] which will attract consumers' attention." Kabushiki Kaisha Toshiba dba Toshiba Corporation v. WUFACAI, WIPO Case No. D2006-0768.

The Panel agrees with the Complainant's opinion that the registration of the disputed domain name is an example of typosquatting. The substitution of the letters "L" and "O" by the letter "B" in the mark's verbal portion "ARCELR" created a word ("ARCEBR") without meaning. This is a clear indication that such word was created in order for the Respondent to benefit from people misspelling the Complainant's domain name <arcelormittal.com>. It is well established that typosquatting can constitute a finding that the domain name is confusingly similar (Deutsche Bank Aktiengesellschaft v. New York TV Tickets Inc., WIPO Case No. D2001-1314, DaimlerChrysler Corporation v. Worshipping, Chrysler, and Chr, aka Dream Media and aka Peter Conover, WIPO Case No. D2000-1272 and Playboy Enterprises v. Movie Name Company, WIPO Case No. D2001-1201).

In addition, the Panel understands that typosquatting is per se an indication of bad faith, as already decided, in the cases, Bang & Olufsen a/s v. Unasi Inc, WIPO Case No. D2005-0728 and The Nasdaq Stock Market, Inc. v. Act One Internet Solutions, WIPO Case No. D2003-0103.

The Panel thus considers this to be a clear case of typosquatting.

In conclusion, the Panel finds that the disputed domain name <arcebrmittal.com> is confusingly similar to the Complainant's trademark ARCELORMITTAL.

## 2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a 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 burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent does not have a legal right to use the term "ARCELORMITTAL" as part of its domain name. The Respondent is not in any way connected with the Complainant nor is it authorized to register the disputed domain name or use its intellectual property rights for its operations as a licensee or in any capacity. In addition, the disputed domain name resolves to an index page which allegedly confirms that the Respondent has no demonstrable plan to use the disputed domain name.

In a present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

## 3) The disputed domain name has been registered and is being used in bad faith

The Panel finds that the disputed domain name <arcebrmittal.com> is confusingly similar to the Complainant's distinctive trademark ARCELORMITTAL which is widely known and well-established. Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The Panel finds that such actions constitute bad faith pursuant to paragraph 4(b)(iv) of the Policy, which provides: "by using the domain name, respondent has intentionally attempted to attract, for commercial gain, Internet users to respondent's 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 respondent's web site or location or of a product or service on respondent's web site or location."

The fact that a complainant's trademark has a strong reputation and is widely used and the absence of evidence whatsoever of any actual or contemplated good faith use are further circumstances that may evidence bad faith registration and use in the event of passive use of domain names (see section 3.3, WIPO Overview 3.0).

In the present case, the Panel is of the opinion that the Complainant's ARCELORMITTAL trademark is distinctive and widely used, which makes it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent.

In addition, the Panel agrees with the Complainant that the misspelling of the trademark ARCELORMITTAL was intentionally

designed to be confusingly similar with the Complainant's trademark.

Finally, the disputed domain name resolves to an index page. The disputed domain name is not used for any bona fide offerings. The Panel believes that it is likely that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name (par. 4(b) (i) of the Policy). Countless UDRP decisions confirmed that the passive holding of a domain name with the knowledge that the domain name infringes another party's trademark rights is evidence of bad faith registration and use (see, in this regard, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and also the panels' consensus view on this point, as reflected in the "WIPO Overview of WIPO Views on Selected UDRP Questions" at paragraph 3.2.).

For all reasons stated above, the Panel is satisfied that the Complainant has proven the third element of the Policy that is that the Respondent's registration and use of 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. ARCEBRMITTAL.COM: Transferred

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## PANELLISTS

Name	Mgr. Barbora Donathová, LL.M.
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DATE OF PANEL DECISION 2021-11-23

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Publish the Decision

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