

Decision for dispute CAC-UDRP-104152

Case number CAC-UDRP-104152

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Domain names arcalromittal.com

Case administrator

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

Complainant

Organization ARCELORMITTAL (SA)

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Ehud Ehart

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 is the owner of international trademark registration number 947686 for ARCELORMITTAL mark registered on August 3, 2007.

FACTUAL BACKGROUND

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

The Complainant is one of the largest steel manufacturers in North America, South America, and Europe: steel manufacturing in 17 countries; customers in 160 countries; and 168,000 employees in 2020 according to the Complainant's information which the Complainant has provided to the Panel. The Complainant's trademark ARCELORMITTAL is widely known. Past panels have confirmed the notoriety of the trademark ARCELORMITTAL in the following cases:

- 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."); and

- CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd ("The Panel is convinced that the Trademark is highly distinctive and well-established.").

The Complainant is the owner of the trademark mentioned above.

The disputed domain name was registered on November 2, 2021. The disputed domain name resolves to an inactive page.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

i) The Complainant has rights in the mark ARCELORMITTAL (international trademark registration number 947686 registered on August 3, 2007). The disputed domain name is confusingly similar to the Complainant's trademark "ARCELORMITTAL" because it includes the Complainant's trademark in its entirety, and misspells the Complainant's trademark ARCELORMITTAL.

ii) The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Complainant is not related in any way with the Respondent. 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 to apply for registration of the disputed domain name. The disputed domain name resolves to an inactive page.

iii) The Respondent has registered and is using the disputed domain name in bad faith. 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 misspelling of the trademark ARCELORMITTAL was intentionally designed to be confusingly similar with the Complainant's trademark. The disputed domain name resolves to an inactive page. The passive holding of the disputed domain name constitutes bad faith use. MX servers are configured. It suggests that the disputed domain name may be actively used for email purposes.

RESPONDENT:

The Respondent did not submit a Response.

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

Preliminary Issue: Language of the Proceedings

The Panel notes that the Registration Agreement is written in Japanese, thereby making the language of the proceedings in Japanese. The Complainant has requested that the proceeding should be conducted in English. The Panel has the discretion under UDRP Rule 11(a) to determine the appropriate language of the proceedings taking the particular circumstances of the administrative proceeding into consideration. See Section 4.5, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition; see also *Lovehoney Group Limited v yan zhang*, CAC 103917 (CAC August 17, 2021) (finding it appropriate to conduct the proceeding in English under Rule 11, despite Japanese being designated as the required language in the registration agreement). The Complainant contends that the Respondent is located in the United States in which the language is English. Therefore, the Respondent is familiar with English.

Pursuant to UDRP Rule 11(a), the Panel finds that persuasive argument has been adduced by the Complainant. After considering the circumstance of the present case, in the absence of the Response and no objection to the Complainant's request for the language of proceeding, the Panel decides that the proceeding should be in English.

The Panel is satisfied that all other 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

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (2) the 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.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO February 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Rights

The Complainant contends that it has rights in the mark ARCELORMITTAL (international trademark registration number 947686 registered on August 3, 2007). The Complainant has provided the Panel with a copy of the trademark registration at issue. Registration of a mark with an international trademark organization sufficiently establishes the required rights in the mark for purposes of the Policy. As such, the Panel finds that the Complainant has established its rights in the mark ARCELORMITTAL.

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant's trademark "ARCELORMITTAL" because it includes the Complainant's trademark in its entirety. The misspelling of the Complainant's trademark ARCELORMITTAL, i.e., the substitution of the letter "E" by the letter "A" and the reversal of the letters "O" and "R", is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

The Panel notes that the disputed domain name incorporates the Complainant's trademark in its entirety. The Panel agrees that the misspelling of the Complainant's trademark ARCELORMITTAL to create the disputed domain name, i.e., the substitution of the letter "E" by the letter "A" and the reversal of the letters "O" and "R" does not prevent the disputed domain name from being confusingly similar to the Complainant's trademark. The addition of '.com' gTLD is generally disregarded in the assessment of confusing similarity. Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark ARCELORMITTAL under Policy paragraph 4(a)(i).

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant must first make a prima facie case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455 (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 Policy). See also *Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (Forum November 2, 2011) (finding that a complainant must offer some evidence to make its prima facie case and satisfy Policy paragraph 4(a)(ii)).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is not commonly known by the disputed domain name. Past panels have held that a respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. The Complainant is not related in any way with the Respondent. 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 to apply for registration of the disputed domain name by the Complainant. The disputed domain name is a typosquatted version of the Complainant's trademark. 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. The disputed domain name resolves to an inactive page.

The Panel finds that the Complainant has made out a prima facie case that arises from the considerations above. All of these matters go to make out the prima facie case against the Respondent. As the Respondent has not filed a Response or attempted by any other means to rebut the prima facie case against it, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii).

Bad faith

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

(i) circumstances indicating that the respondent has registered or 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 the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) 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 the respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant argues 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. See *ArcelorMittal SA v. Tina Campbell* WIPO Case No. DCO2018-0005, ("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.").

While constructive knowledge is insufficient for a finding of bad faith, per Policy paragraph 4(a)(iii), registration of an infringing domain name with actual knowledge of another's trademark rights is sufficient to establish bad faith, and can be shown by the notoriety of the mark and the use Respondent makes of the disputed domain name. See *Orbitz Worldwide, LLC v. Domain Librarian*, FA 1535826 (Forum February 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding Policy paragraph 4(a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it."); see also *AutoZone Parts, Inc. v. Ken Belden*, FA 1815011 (Forum December 24, 2018) ("Complainant contends that Respondent's knowledge can be presumed in light of the substantial fame and notoriety of the AUTOZONE mark, as well as the fact that Complainant is the largest retailer in the field. The Panel here finds that Respondent did have actual knowledge of Complainant's mark, demonstrating bad faith registration and use under Policy paragraph 4(a)(iii)."). The Panel agrees and infers, due to the notoriety of the Complainant's mark that the Respondent had actual knowledge of the Complainant's rights in its mark ARCELORMITTAL at the time of registering the disputed domain name, and thus the Panel finds the Respondent's bad faith in registration.

Next, the Complainant contends that the disputed domain name resolves to an inactive page. 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 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.

The Panel agrees that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the panel must give close attention to all the circumstances of the respondent's behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent's passive holding amounts to acting in bad faith.).

Taking into account the notoriety of the Complainant's mark and the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name, the Panel concludes that the Respondent's passive holding of the disputed domain name constitutes bad faith under Policy, paragraph 4(a)(iii) and that the Respondent is using the disputed domain name in bad faith.

Accepted

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

1. ARCALROMITTAL.COM: Transferred

PANELLISTS

Name	Mr. Ho-Hyun Nahm, Esq.
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DATE OF PANEL DECISION 2021-12-14

Publish the Decision
