Decision for dispute CAC-UDRP-100359

Case number	CAC-UDRP-100359
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Domain names	accelormittal.com, arcelormitta.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	Teissonnière Sardain Chevé A.A.R.P.I.

Respondent

Organization	Above.com Domain Privacy

OTHER LEGAL PROCEEDINGS

Not applicable

IDENTIFICATION OF RIGHTS

“ARCELORMITTAL” is a well-known trademark belonging to the Complainant who has spent substantial time, effort and money advertising and promoting “ARCELORMITTAL” throughout the world. As a result, “ARCELORMITTAL” has become distinctive and well-known and the company has developed an enormous amount of goodwill in the mark.

The trademarks “ARCELORMITTAL”, “ARCELOR” and “MITTAL” are entirely reproduced in both disputed domain names.

FACTUAL BACKGROUND

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

1. Discussion on the Respondent/Respondents

1.1. Firstly, the Panel should state that Above.com Domain Privacy is the proper Respondent in these proceedings whether on its own behalf or as an agent for the two new disclosed domain name owners. The registrar that provides privacy registration services must bear the consequences of anonymous registration (WIPO Case No. D2007-1854, F. Hoffmann-La

Roche AG v. PrivacyProtect.org, Domain Admin and Mark Sergijenko - Annex 37, WIPO Case No. D2006-0881, Ohio Savings Bank v. 1&1 Internet, Inc. and David Rosenbaum - Annex 38). This is in line with a constant CAC/WIPO/NAF case law regarding privacy services. In similar cases Panels always keep on the record the initial Respondent and eventually add additional Respondents.

The Complainant asserts that Above.com Domain Privacy appears on the public Whois search engine as the owner of the disputed domain names and shall consequently assume this quality in these proceedings. Any eventually existing agreement between Above.com Domain Privacy and the Registrants disclosed upon the Registrar verification is of contractual matter and consequently is not opposable to the Complainant in these proceedings.

Moreover, looking at the fact that the newly relieved Registrants are companies (namely Transure Entreprise LTD and DNWDNS), there is no reasonable motivation under the privacy principles to hide the true identity of the registrants. Privacy commonly regards individuals, not companies. Indeed there may well be valid reasons for the use of privacy registration services by individuals but such services may not be legitimately offered to companies. Looking at the fact that the Whois public database only requires basic data (address, e-mail and telephone) which are commonly public about companies there is no reasonable motivation for a company to hide the true identity by means of the privacy services.

Nevertheless, it is also important for the effective functioning of the Policy to have reliable and readily accessible means by which the holder or registrant of a domain name can be identified. That is the purpose of the Whois database, which is the key source of information on registrant identity, and therefore respondent identity, in proceedings under the Policy.

In the case at hand, considering that the domain names are cybersquatting ArcelorMittal's trademarks and are apparently registered by companies (not individuals) it is obvious that privacy services are indeed used to frustrate a trademark holder's claim of abusive registration.

Moreover, the fact that both domain names have associated Pay-Per-Click webpages there is no reasonable need to protect its identity of the Registrants except to frustrate the purposes of the Policy or make it difficult for a brand owner to protect its trademarks against infringements and cybersquatting.

Although very much aware of the fact that privacy services are being used to hide the true identity of numerous registrants accused of cybersquatting, Above.com Domain Privacy did not take further measures to limit such practice. In this context Above.com Domain Privacy has been recently accused of Contributory Cybersquatting of numerous domain names confusingly similar to world's most well-known trademarks under the Anti-Cybersquatting Consumer Protection Act (Annex 39).

In the light of the above the Panel is requested to state that indeed, Above.com Domain Privacy is the proper Respondent in the present case and shall assume liability under the Policy.

1.2. In subsidiary, if the Panel considers that Transure Entreprise Ltd and DNWDNS are additional proper Respondents, the Complainant asserts that the Panel should consolidate the Complaint for multiple respondents.

1.2.1. Transure Entreprise Ltd is a cybersquatter associated to Above.com Domain Privacy. Accusations for Contributory Cybersquatting disclosed that Above.com Privacy and Transure Entreprise Ltd are, among other, being used by Above.com Pty under the "privacy services" umbrella as false identities for the purposes of registration and traffic of confusingly similar domain names (Annex 39, page 3).

Moreover, Above.com Domain Privacy and Transure Entreprise Ltd are jointly constant respondents in numerous UDRP cases. 71 examples are listed below:

D2011-1740 Above.com Domain Privacy / Transure Enterprise Ltd
D2011-1571 Transure Enterprise Ltd, Host Master/ Above.com Domain Privacy
D2011-1478 Transure Enterprise Ltd

D2011-1287 9668727 Host Master Transure Enterprise Ltd
D2011-0920 Transure Enterprise Ltd / Above.com Domain Privacy
D2011-0737 Contact Id 9668727, Host Master, Transure Enterprise Ltd / Above.com Pty. Ltd.
D2011-0487 Above.com Domain Privacy / Transure Enterprise Ltd
D2011-0447 'Transure Enterprise Ltd / Above.com Domain Privacy
D2011-0291 Above.com Domain Privacy/ Transure Enterprise Ltd, Host Master
D2011-0228 Host Master, Transure Enterprise Ltd
D2011-0062 Above.com Domain Privacy / Host Master Transure Enterprise Ltd
D2010-2102 Above.com Domain Privacy / Host Master, Transure Enterprise Ltd
D2010-2085 Above.com Domain Privacy/ Transure Enterprise Ltd
D2010-1986 Above.com Domain Privacy / Shu Lin, Shu Lin Enterprises Limited / Host Master, Transure Enterprise Ltd
D2010-1648 Shu Lin/Transure Enterprise Ltd/ Above.com Domain Privacy
D2010-1581 Above.com Pty. Ltd. Domain Privacy / Host Master, Transure Enterprise Ltd
D2010-1497 Above.com Domain Privacy / Host Master, Transure Enterprise Ltd, David Smith
D2010-1300 Transure Enterprise Ltd/Above.com Domain Privacy
D2010-1158 Above.com Domain Privacy / Transure Enterprise Ltd
D2010-1118 Above.com Domain Privacy / Transure Enterprise Ltd, Host Master
D2010-1002 Above.com Domain Privacy / Transure Enterprise Ltd., Host Master (hostmaster@transureent.com)
D2010-0964 Above.com Domain Privacy / Transure Enterprise Ltd
D2010-0906 Above.com Domain Privacy / Transure Enterprise Ltd
D2010-0850 Kirareed.org c/o Host Master, Above.com Domain Privacy / Transure Enterprise Ltd
D2010-0700 Transure Enterprise Ltd/Above.com Domain Privacy
D2010-0566 Above.com Domain Privacy/Transure Enterprise Ltd./ Shu Lin, Shu Lin Enterprises Limited
D2010-0565 Above.com Domain Privacy / Transure Enterprise Ltd
D2010-0518 Above.com Domain Privacy/ Transure Enterprise Ltd
D2010-0513 Transure Enterprise Ltd /Above.com Domain Privacy
D2010-0462 Above.com Domain Privacy / Transure Enterprise Ltd
D2010-0428 Above.com Domain Privacy/Transure Enterprise Ltd
D2010-0426 Above.com Domain Privacy/Transure Enterprise Ltd
D2010-0300 Transure Enterprise Ltd
D2010-0232 Above.com Domain Privacy / Transure Enterprise Ltd
D2010-0214 Transure Enterprise Ltd.
D2010-0138 Transure Enterprise Ltd, Host master
D2010-0056 Above.com Domain Privacy/Transure Enterprise Ltd
D2009-1765 Above.com Domain Privacy / Transure Enterprise Ltd
D2009-1729 Transure Enterprise Ltd
D2009-1666 Above.com Domain Privacy / Transure Enterprise Ltd
D2009-1660 Transure Enterprise Ltd
D2009-1638 Transure Enterprise Ltd./Above.com Domain Privacy
D2009-1634 Above.com Domain Privacy/Transure Enterprise Ltd, Host Master
D2009-1616 Transure Enterprise Ltd.
D2009-1422 Transure Enterprise Ltd, Host Master
D2009-1395 Above.com Domain Privacy/Transure Enterprise Ltd
D2009-1347 Transure Enterprise Ltd
D2009-1253 Above.com Domain Privacy/Transure Enterprise Ltd
D2009-1185 Above.com Domain Privacy / Transure Enterprise Ltd
D2009-1174 Above.com Domain Privacy Host Master/Transure Enterprise Ltd
D2009-1037 Above.com Domain Privacy/Transure Enterprise Ltd, Host Master
D2009-1028 Transure Enterprise Ltd
D2009-1019 Transure Enterprise Ltd / Privacy
D2009-0907 Above.com Domain Privacy, Host Master / Transure Enterprise Ltd, Host Master
D2009-0838 Above.com Domain Privacy/Transure Enterprise Ltd

D2009-0836 Transure Enterprise Ltd, Host Master
D2009-0660 Transure Enterprise Ltd
D2009-0630 Above.com Domain Privacy/Transure Enterprise Ltd
D2009-0490 Above.com Domain Privacy / Transure Enterprise Ltd
D2009-0010 Transure Enterprise Ltd.
D2008-1754 Transure Enterprise Ltd, Host Master
D2008-1636 Transure Enterprise Ltd
D2008-1304 Transure Enterprise Ltd, Host Master
D2008-1200 Transure Enterprise Ltd.
D2008-1184 Transure Enterprise Ltd, Host Master
D2008-1032 Transure Enterprise Ltd.
D2008-0938 Transure Enterprise Ltd., Host Master
D2008-0684 Transure Enterprise Ltd.
D2008-0422 Transure Enterprise Ltd.
D2008-0384 Transure Enterprise Ltd

1.2.2. As for DNWDNS, this company apparently does not exist. Online researches with the Hong King Companies Registry (Annex 40 and Annex 41) show that such company is not officially registered.

The representative of DNWDNS who appears listed on the Registrar Verification, namely David Woo, has also been Respondent, jointly with Above.com Domain Privacy, in several UDRP procedures.

D2010-1611 ABOVE.COM PTY Ltd./ David Woo
D2010-1566 Above.com Domain Privacy / David Woo
D2010-1483 David Woo / Above.com Domain Privacy
D2010-1160 Above.Com Domain Privacy / David Woo

1.2.3. Facts in the record indicate that the disputed domain names are under common control. It is very much likely that the domain names are controlled by a single party given:

- the use of the same Registry and privacy service for both domain names;
- the similarity of the Domain Names and the fact that both domain names are cybersquatting ArcelorMittal trademark by means replacing/deleting one letter;
- the fact that the Domain Names are being used for the same purpose, i.e. pay-per-click;
- the fact that the Domain Names are being directed to essentially identical websites (Annex 42 and Annex 43).

In similar cases Panels decided that it is appropriate to consolidate the case involving multiple Respondents and multiple domain names in a single case (WIPO Case No. D2004-0659, Sharman License Holdings, Limited v. Dustin Dorrance/Dave Shullick/Euclid Investments – Annex 44, WIPO Case No. D2010-0281, Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons – Annex 45)

In the light of the above it is fair reasonable to consider that Above.com Domain Privacy is operating both domain names and that Transure Enterprise Ltd and DNWDNS/David Woo are only false identities used with the mere purpose of the registration of confusingly similar domain name.

Moreover the consolidation of the multiple domain name disputes involving the multiple Respondents pursuant to paragraph 10(e) of the Rules would be procedurally efficient. Doing so promotes the shared interests of the parties in avoiding unnecessary duplication of time, effort and expense, and generally furthers the fundamental objectives of the Policy. Doing so under the circumstances present here will not unfairly favor nor prejudice any party.

Accordingly, the Panel, having regard to all relevant circumstances, is requested to conclude that the consolidation of the multiple domain name disputes asserted by the Complainant against the Respondents is consistent with the Policy and Rules, and comports with prior relevant UDRP decisions in this area.

2. The domain name are confusingly similar to trademarks and domain name in which the Complainant has rights (Policy, Paragraph 4(a) (i); Rules, Paragraphs 3(b) (viii), (b) (ix) (1))

The disputed domain names are confusingly similar to the Complainant's above mentioned prior rights.

Firstly, it is undisputable that ARCELORMITTAL has rights in the above mentioned marks. The registration of a mark is prima facie evidence of validity, which creates a rebuttable presumption that the mark is inherently distinctive. Respondent has the burden of refuting this assumption (WIPO Case n° D2002-0201, Janus Interantional Holding Co. v. Scott Rademacher – Annex 13).

"ARCELORMITTAL" is a well-known trademark. Complainant has spent substantial time, effort and money advertising and promoting "ARCELORMITTAL" throughout the world. As a result, "ARCELORMITTAL" has become distinctive and well-known and the company has developed an enormous amount of goodwill in the mark.

The trademarks "ARCELORMITTAL", "ARCELOR" and "MITTAL" are entirely reproduced in both disputed domain names.

The domain name < accelormittal.com > reproduces the trademark "ARCELORMITTAL" with the only difference that the first "r" is replaced by the letter "c". This does not significantly affect the appearance or pronunciation of the domain name and therefore makes an insubstantial difference.

Similarly the domain name < arcellormitta.com > reproduces the trademark "ARCELORMITTAL" which is purposefully misspelled by removing the last letter namely "l".

UDRP panels have consistently held that a mere addition or a minor misspelling of Complainant's trademark does not create a new or different mark in which Respondent has legitimate rights (WIPO Case No. D2003-0317, Hobson, Inc. v. Peter Carrington a/k/a Party Night Inc – Annex 14).

Such de minimis differences between a domain name and a trademark are insufficient to overcome a finding of "confusing similarity" (WIPO Case No: D2002-0835, United Airlines, Inc v. United Airline Dot Com – Annex 15).

Insignificant modifications to trademarks are commonly referred to as "typo-squatting" or "typo-piracy". Such conduct seeks to wrongfully take advantage of errors by users in typing domain names into their web browser's location bar and creates a virtually identical and/or confusingly similar mark to the Complainant's trademark under paragraph 4(a)(i) of the Policy.

Panels have constantly decided to transfer to the owners of the relevant trademarks the registered domain names consisting of typo-squatting by substituting or removing a letter (WIPO Case No. D2001-0654, Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol – Annex 16, WIPO Case No. D2000-0937, AltaVista Company v. Saeid Yomtobian – Annex 17, WIPO Case No. D2002-0775 Wachovia Corporation v. Peter Carrington – Annex 18, WIPO Case No. D2003-0707, Yurtici Kargo Servisi A.S. v. Yurticicargo Yurticikargo – Annex 19).

Furthermore, the addition of the gTLD ".com" is of no legal significance from the standpoint of comparing the domain name to the mark. Such use does not serve to identify a specific enterprise as a source of goods or services (WIPO Case No. D2001-0602, SBC Communications v. Fred Bell aka Bell Internet – Annex 20).

Secondly, the risk of confusion between the Complainant' trademarks and the contested domain names is all the more important in that Complainant registered the domain name < arcelormittal.com >. This domain name is actively used and points to ArcelorMittal's website portal (Annex 21).

Thirdly, the risk of confusion is also increased by the fact that the Complainant's trademarks are well and widely known in the steel sector and are easily recognizable as such.

3. The Respondent has no rights or legitimate interests in respect of the domain names (Policy, Paragraph 4 (a) (ii); Rules, Paragraph 3 (b) (ix) (2))

Complainant claims that Respondent has no right or legitimate interests in respect of the disputed domain names.

Preliminarily, although Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, panels have recognized that this could result in the often impossible task of proving a negative proposition, requiring information that is primarily if not exclusively within the knowledge of the Respondent. Thus, the consensus view is that paragraph 4(c) of the Policy shifts the burden to the Respondent to come forward with evidence of a right or legitimate interest in the domain name, once the Complainant has made a prima facie showing indicating the absence of such rights or interests (WIPO Case No. D2000-0270, Document Technologies, Inc. v. International Electronic Communications Inc. – Annex 22).

In the case at hand there is no evidence that Respondent used the domain names for anything but parking pages websites, which advertise various products and services. This effectively shifts the burden to the Respondent to demonstrate rights or legitimate interests in the domain names.

Subsequently, should the above statement not be considered, the following arguments shall be taken into consideration.

Firstly, the Respondent cannot prove any use of the disputed domain names in connection with a bona fide offering of goods or services.

The Respondent is using the disputed domain names for pay-per-click parking pages (Annex 32 – Homepage of www.accelormittal.com, Annex 33 – Homepage of www.arcelormitta.com). The domain names are mere doors to other websites which have paid for advertisement and which in many cases are not connected in any manner to ARCELORMITTAL. When Internet users connect to the disputed domain names they are directed to parking pages showing advertising of different products and services. This is a definite diversion of potential Complainant's consumers and it cannot be considered a bona fide offering of goods and services.

UDRP panels have previously held that Respondent's use of a domain name, which incorporates a third party's trademark in connection with an Internet web site that merely lists links to third party web sites is not a bona fide offering of services and is not a legitimate non-commercial or fair use of the disputed domain name (WIPO Case No. D2007-1499, E.J. McKernan Co. v. Texas International Property Associates – Annex 23, WIPO Case No. D2010-1437, Lardi Ltd v. Belize Domain WHOIS Service Lt Inc – Annex 24, WIPO Case No. D2007-1415, Asian World of Martial Arts Inc. v. Texas International Property Associates – Annex 25).

To sum up, Respondent's use of the domains, as generic holding pages, is in no way a bona fide offering of goods and services and this only emphasizes the fact that Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

Secondly, the Respondent has no registered trademark rights in the word "arcelormittal", "arcelor" or "mittal" and there is no evidence that the Respondent is commonly known by the disputed domain names.

Thirdly, the Respondent has not been licensed or otherwise authorized to use any of the Complainant's trademarks or to apply for or use any domain name incorporating such trademarks. In similar circumstances, Panels considered that no bona fide or legitimate use of the disputed domain names could be claimed by the Respondent (WIPO Case D2000-0055, Guerlain SA v. Peikang – Annex 26, WIPO Case D2008-0488, BHP Billiton Innovation Pty Ltd. v. OS Domain Holdings IV LLC – Annex

27, WIPO Case D2009-0258, Mpire Corporation v. Michael Frey – Annex 28).

4. The domain names were registered and are being used in bad faith (Policy, paragraphs 4 (a) (iii), 4(b); Rules, paragraph 3 (b) (ix) (3))

The disputed domain names have been registered and are being used by the Respondent in bad faith.

As to bad faith registration, when registering the disputed domain names, the Respondent was necessary aware of the Complainant's well-known business and widespread reputation in its ARCELORMITTAL trademarks.

Clearly, such maneuver would not have been generated if the Respondent did not know the Complainant's activities or its official website (WIPO Case D2010-1290, Meilleurtaux v. Domain Manager of Bondi Junction – Annex 29).

Moreover, the disputed domain names have been registered after the registration of the trademark "ARCELORMITTAL". Given the international reputation of the Complainant, by choosing to register and use the domain names which are confusingly similar to the Complainant's widely known and distinctive trademarks "ARCELORMITTAL", "ARCELOR" and "MITTAL", the Respondent intended to ride on the goodwill of the Complainant's prior rights in an attempt to exploit Internet traffic destined for the Complainant.

As to bad faith use, the Policy indicates that may, "in particular but without limitation", be evidence of bad faith the fact that a respondent "by using the domain name, … [has] intentionally attempted to attract, for commercial gain, Internet users to [its] 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 of a product or service on [its] web site or location" (id., paragraph 4(b)(iv)).

In the case at hand Respondent has intentionally sought to use Complainant's marks in the disputed domain names to attract Internet users to websites and other on-line locations for commercial gain by confusing consumers as to sponsorship of the websites. This constitutes bad faith within the meaning of paragraph 4(b)(iv) of the Policy (WIPO Case No. D2000-1495, America Online, Inc. v. John Zuccarini, also known as Cupcake Message, Cupcake Messenger, The Cupcake Secret, Cupcake Patrol, Cupcake City, and The Cupcake Incident – Annex 30).

Consequently, the Respondent has through the use of a confusingly similar domain names, created a likelihood of confusion with the Complainant's prior rights, which constitutes a misrepresentation to the public who might think that the disputed domain names belong or are connected to the Complainant (WIPO Case D2007-0424, Alstom v. Yulei Annex 31).

Moreover, the disputed domain names are to be qualified as doppelganger domains considering that web addresses can be easily created in order to capture data which is sent to misspelt email addresses. Additionally please note that the domain name < arcelormittal.com > is frequently used in e-mail addresses of various employees for professional correspondence (e.g. Complainant's contact e-mail details in this administrative procedure are ml.pied@arcelormittal.com). Therefore, there is remarkable high risk of sensitive data capture which might be sent to misspelt email addresses.

In previous attempts to cease the illegitimate use of the domain names, a warning letter dated November 23, 2011 notifying Complainant's prior rights in the disputed domain names and requesting the domain name to be transferred has been sent to the Respondent (Annex 34) who, although has received it by e-mail never replied to it.

Thus, the Respondent knowingly and intentionally attempted to divert the traffic intended for the Complainant's website to its own websites.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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 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 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.

The Panel is satisfied that Above.com Doman Privacy is the one and proper Respondent in this issue.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that:
1. according to the Rules, para 3(b) (viii), the present Complaint is based on several trademarks of the Complainant, which include “ARCELORMITTAL”,a well-known trademark. Complainant has spent substantial time, effort and money advertising and promoting “ARCELORMITTAL” throughout the world. As a result, “ARCELORMITTAL” has become distinctive and well-known and the company has developed an enormous amount of goodwill in the mark.vThe trademarks “ARCELORMITTAL”, “ARCELOR” and “MITTAL” are entirely reproduced in both disputed domain names.

2. all available evidence suggests that the respondent appears to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy) and that the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

3. The Panel is satisfied that Above.com Doman Privacy is the one and proper Respondent in this issue.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ACCELORMITTAL.COM**: Transferred
2. **ARCELORMITTA.COM**: Transferred

PANELLISTS

Name	**Joseph Cannataci**

DATE OF PANEL DECISION 2012-02-27

Publish the Decision