Decision for dispute CAC-UDRP-101020

Case number	**CAC-UDRP-101020**
Time of filing	**2015-07-22 10:40:22**
Domain names	**arcelormittals.com, arrcelormittal.com, arccelormittal.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**ArcelorMittal SA**

Complainant representative

Organization	**Nameshield (Anne Morin)**

Respondent

Organization	**VistaPrint Technologies Ltd**

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is owner of International trade mark No. 947686 for the mark ARCELORMITTAL, which was registered on 3 August 2007 in classes 7, 9, 12, 19, 21, 39, 40, 41 and 42.

The Complainant also the registrant of the domain name <arcelormittal.com> which was registered on 27 January 2006.

FACTUAL BACKGROUND

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

The Complainant, ArcelorMittal S.A. is a large steel producing company with operations around the world.

The Complainant owns the International trade mark registration for ARCELORMITTAL and the domain name <arcelormittal.com>.

The disputed domain names were registered by the Respondent of as follows:

<arcelomittals.com> on 2 July 2015;
< arrcelomittal.com> on 2 July 2015; and
<arccelomittal.com> on 16 July 2015.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANTS' CONTENTIONS:

As far as the Complainant contentions are concerned, the Complainant claims the disputed domain names to be confusingly similar to its trademark. Furthermore, the Complainant contends that the Respondent has no rights or legitimate interest in the disputed domain names. Finally, the Complainant states that the disputed domain names have been registered and used in bad faith.

The Complainant refers to the following cases to support its submissions:

CAC - 100831 - ArcelorMittal S.A. v. Anton M Bahtin - <arcel0rmittal.com>
CAC - 100740 - ArcelorMittal S.A. v. arcelornnittal - <arcelornnittal.com>
CAC - 100689 - ArcelorMittal S.A. v. desmond smith - <arcellormital.com>
CAC - 100573 - ArcelorMittal S.A. v. David Albert - <arcelormmittal.com>
CAC - 100438 - ArcelorMittal S.A. v. Above.com Domain Privacy <arselormittal.com>
CAC - 100359 - ArcelorMittal S.A. v. Above.com Domain Privacy <accelormittal.com> and <arcelormitta.com>
NAF - FA699652 - Braun Corp. v. Loney
NAF - FA139720 - Tercent Inc. v. Lee Yi
WIPO - D2014-1387 - Tetra Laval Holdings & Finance S.A. v. VistaPrint Technologies Ltd
WIPO - D2012-0744 - Riot Games, Inc. v. Maik Baumgartner
WIPO - D2011-0060 - Allstate Insurance Company v. Anunet Pvt Ltd.
WIPO - D2011-0830 - Geoffrey, LLC v. Toys R Russ and Days of ‘49
WIPO - D2000-0003 - Telstra Corporation Limited v. Nuclear Marshmallows
WIPO - D2000-0400 - CBS Broadcasting, Inc. v. Dennis Toeppen
WIPO - D2014-1387 - Tetra Laval Holdings & Finance S.A. v. VistaPrint Technologies Ltd
WIPO - D2015-0863 - The Net-A-Porter Group Limited v. VistaPrint Technologies Ltd.
WIPO - D2015-0819 - Barry Callebaut AG Barry Callebaut Belgium NV v. VistaPrint Technologies Ltd.
WIPO - D2015-0769 - Carrefour v. VistaPrint Technologies Ltd.
CAC - 100957 - EUTELSAT SA v. VistaPrint Technologies Ltd.
CAC - 100938 - BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. VistaPrint Technologies Ltd.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Names are 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 Names (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 Names have been registered and are 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 the UDRP were met and there is no other reason why it would

be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:

(i) That the dispute domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.
(ii) The Respondent has no rights or legitimate interests in the domain names.
(iii) The domain names have been registered and used in bad faith.

A. Rights.

The Panel is satisfied that the Complainant is the owner of the International trade mark registration for ARCELORMITTAL, which predates the registration of the disputed domain names.

The generic top level suffix, .com may be disregarded when considering whether a disputed domain name is confusingly similar to a trade mark in which the Complainant has rights. Ignoring the .com suffix, each of the disputed domain names has only one letter that differs from the Complainant's mark ARCELORMITTAL. The addition of 'S' in <arcelomittals.com>, 'R' in <arrcelomittal.com>, and 'C' in <arccelomittal.com>, does not avoid the conclusion that the domain names are confusingly similar to the Complainant's mark ARCELORMITTAL.

The Panel finds that each of the disputed domain names, < arcelomittals.com>, <arrcelomittal.com>; and <arccelomittal.com>, are confusingly similar to the Complainant's mark ARCELORMITTAL.

B. Lack of rights or legitimate interests.

The Complainant says that the Respondent is not affiliated with nor authorized by the Complainant in any way to use the ARCELORMITTAL marks, nor does the Complainant have any business with the Respondent.

The evidence submitted with the Complaint shows that the disputed domain names resolve to parking pages. This type of use is neither a bona fide offering of goods or services under paragraph 4(c)(i) of the Policy, nor a legitimate non-commercial or fair use under paragraph 4(c)(iii). Further, the Respondent was not commonly known by any of the disputed domain names for the purposes of paragraph 4(c)(ii) of the Policy.

The Complainant has made out a prima facie case of absence of rights or legitimate interests in the domain names on the part of the Respondent and therefore, the evidentiary burden shifts to the Respondent to show that he has rights or legitimate interests in the domain names.

The Respondent has not filed a Response and there is no evidence that the Respondent has used or has been preparing to use the disputed domain names in connection with a bona fide offering of goods or services, or for a legitimate non-commercial or fair use, without intent for commercial gain.

The Panel finds that the Respondent has no rights or legitimate interest in the disputed domain names, <arcelomittals.com>, <arrcelomittal.com> and <arccelomittal.com>.

C. Registration and use of the disputed domain names in bad faith.

Paragraph 2 of the Policy provides that it is the Respondent's responsibility, when registering a domain name, to determine whether it would infringe or violate someone else's rights.

There appears to be no reason why the Respondent would register the disputed domain names other than to create a likelihood of confusion with the Complainant's well known mark ARCELORMITTAL. The addition of 'S' in

<arcelomittals.com>, ‘R’ in <arrcelomittal.com> and ‘C’ in <arccelomittal.com> amounts to typo-squatting by the Respondent.

As found by previous panel decisions the incorporation of a well known trade mark coupled with inactive website use may be evidence of bad faith registration and use (see WIPO -D2000-0003, Telstra Corporation Limited v Nuclear Marshmallows).

The Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain names. Further, that the domain name <arrecellormittal.com> has been used for creating an email address “andy.harshaw@arrcelormittal.com” which could create a likelihood of confusion with the Complainant’s well-known mark and damage the Complainant’s interests.

The Respondent has failed to respond to the Complainant and the Panel is entitled to draw an adverse inference from this. Taking all these factors into consideration, the Panel cannot conceive of any good faith use of the domain names by the Respondent

Further, there have been numerous other UDRP decisions against the Respondent, including:

CAC No. 100957 - EUTELSAT SA v. VistaPrint Technologies Ltd.,
CAC No. 100938 - BOEHRINGER Ingelheim Pharma GmbH & Co. KG v. VistaPrint Technologies Ltd
WIPO - D2014-1387 - Tetra Laval Holdings & Finance S.A. v. VistaPrint Technologies Ltd
WIPO - D2015-0863 - The Net-A-Porter Group Limited v. VistaPrint Technologies Ltd.
WIPO - D2015-0819 - Barry Callebaut AG Barry Callebaut Belgium NV v. VistaPrint Technologies Ltd.
WIPO - D2015-0769 - Carrefour v. VistaPrint Technologies Ltd.
These show a pattern of conduct of bad faith registration of use of domain names which are confusingly similar to registered trade marks.

Taking all these factors into consideration the Panel finds that the requirements of paragraph 4(a) (iii) of the Policy are satisfied and that the Complainant has proved that the Respondent has registered and used the disputed domain names in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ARCELORMITTALS.COM**: Transferred
2. **ARRCELORMITTAL.COM**: Transferred
3. **ARCCELORMITTAL.COM**: Transferred

PANELLISTS

Name	**Mrs Veronica Bailey**

DATE OF PANEL DECISION 2015-08-28

Publish the Decision