Decision for dispute CAC-UDRP-101265

Case number	CAC-UDRP-101265
Time of filing	2016-08-18 09:16:37
Domain names	arcelormitals.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	Nameshield (Maxime Benoist)

Respondent

Name	Fetty wap LLc Inc

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name ARCELORMITALS.COM (the 'Domain Name').

IDENTIFICATION OF RIGHTS

ARCELORMITTAL S.A. (the 'Complainant') is the owner of numerous registered trade marks for ARCELORMITTAL, including registrations in the United States of America in various classes under numbers 3643643 and 3908649.

FACTUAL BACKGROUND

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

The Complainant is a company specialising in producing steel across the world, and notably in the United States of America. The Complainant refers to their website at: www.arcelormittal.com.

The Complainant 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 operations in more than 60 countries. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant owns various trade marks which include the words ARCELORMITTAL. The Complainant is also the owner

of many Internet domain names which include the words ARCELORMITTAL.

The disputed Domain Name was registered on 17 July 2016.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

The Complainant argues that the Domain Name is confusingly similar to its registered trade marks for ARCELORMITTAL. It points out that the omission of the letter T in the word MITTAL, the addition of the letter S at the end of the domain name and the .COM suffix are not sufficient to escape the finding by the Panel of confusing similarity.

The Complainant states that this is a clear case of "typosquatting", where the Domain Name is an obvious misspelling of the Complainant's ARCELORMITTAL trade mark.

The Complainant has no relationship with the Respondent. The website attached to the Domain Name is inactive, and states that the Registrar has suspended the Domain Name as the email address provided by the registrant has not been verified. Therefore the Complainant states that the Respondent has no rights or legitimate interests in respect of the Domain Name, and the Respondent has registered and used the Domain Name in order to create a likelihood of confusion with the Complainant's trade mark.

The Complainant points out that ARCELORMITTAL is only known in relation to the Complainant. A Google search on the wording ARCELORMITTAL displays various results, all of them being related to the Complainant.

By registering the misspelling of the ARCELORMITTAL trade mark, the Complainant argues that the Domain Name was intentionally registered to be confusingly similar to the Complainant's trade mark.

The Complainant states it is inconceivable that the choice of the Respondent’s Domain Name was made independently of knowledge of the Complainant’s trade marks.

In addition to the website attached to the Domain Name being inactive and stating that it has been suspended due to lack of email verification, the Complainant also argues that the Respondent has provided false contact details.

The Complainant concludes that the Respondent registered and is using the Domain Name in bad faith.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is confusingly similar to a trade 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 Complainant first filed its complaint in relation to the Domain Name with the Czech Arbitration Court on 9 August 2016. In its complaint the Complaint solely stated 'LLc Inc' as the Respondent. However, following a request by the CAC for Registrar Verification, the identity of the registrant was named by the Registrar to be 'Fetty wap' of 'LLc Inc', based in Alabama, USA.

The Complainant filed an amended complaint and the CAC formally commenced proceedings on 24 August 2016. The Respondent was notified accordingly.

However, the Respondent failed to submit a Response within the time frame required in this Complaint, or at all, and a Notification of Respondent's Default was therefore issued by the Czech Arbitration Court on 14 September 2016.

Having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer of Palmer Biggs IP, Solicitors as the Panel in these UDRP proceedings.

PRINCIPAL REASONS FOR THE DECISION

IDENTICAL OR CONFUSINGLY SIMILAR - paragraph 4(a)(i) of the Policy

The disputed Domain Name consists of a close misspelling of the Complainant's ARCELORMITTAL mark in that there is a T missing from the word MITTAL and the addition of the letter S at the end. The Domain Name also contains the '.com' suffix.

The panel does not regard the omission of the letter T and the addition of the letter S to sufficiently alter the nature of the Domain Name such that it might avoid a finding of the Domain Name being confusingly similar to the Complainant's ARCELORMITTAL trade mark.

The '.com' suffix may be disregarded when it comes to considering whether a domain name is identical or confusingly similar to a trade mark in which the Complainant has rights.

As a result, the Panel concludes that the disputed Domain Name is confusingly similar to a trade mark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS - paragraph 4(a)(ii) of the Policy

The Respondent failed to file an administratively compliant (or any) response. In the circumstances the Panel finds from the facts put forward that:

- The Respondent does not appear to have any trade marks associated with the ARCELORMITTAL trade mark.

- There is no evidence that the Respondent is commonly known by the name ARCELORMITTAL, and the Respondent does not have authorisation from the Complainant to use the ARCELORMITTAL trade mark.

- There is no evidence to show the Respondent has used the disputed Domain Name for any bona fide offering of goods or services of its own. The Domain Name does not point to an active website, but merely a Registrar suspension holding page.

On the balance of probabilities, and in the absence of any evidence to the contrary (or any administratively compliant response at all) being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the Domain Name within the meaning of paragraph 4(a)(ii)of the Policy.

REGISTERED AND USED IN BAD FAITH - paragraph 4(a)(iii) of the Policy

Paragraph 4(b) of the Policy sets out non-exclusive criteria which shall be evidence of the registration and use of a domain

name in bad faith including that the Respondent acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant, the trade mark owner, for valuable consideration. The panel believes it likely that this was at least one of the reasons behind the Respondent's registration and use of the Domain Name, not least as due to the passive holding of the Domain Name with no active website.

Alternatively, even if this was not one of the reasons behind the Respondent's registration and use of the Domain Name, the examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. The incorporation of a trade mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. This Panel refers to the decision of Telstra Corporation Limited v. Nuclear Marshmallows WIPO (Case No. D2000-0003), which was summarised by the panel in Soda LLC v. SIMPLEDOLLAR.COM (Case No. D2016-0038) as follows:

"The UDRP panel in the [Telstra] decision... found that passive holding of a domain name can constitute use in bad faith. In Telstra the panel noted that the domain name in issue did not resolve to any web site or other on-line presence; there was no evidence that a site or other on-line presence was being established using the domain name in issue; there was no evidence of any advertising, promotion or display to the public of the said domain name; and finally there was no evidence that the respondent had offered to sell, rent or otherwise transfer the said domain name to the complainant, a competitor of the complainant, or any other person. Just as in the present case, no positive action was being taken by the respondent in relation to the domain name and the panel concluded that such non-use constituted bad faith."

On the balance of probabilities, and in the absence of any evidence to the contrary (or any administratively compliant response at all) being put forward by the Respondent, this Panel believes from the facts in this case that the Respondent had the Complainant's ARCELORMITTAL trade mark in mind when registering and using the Domain Name. The Panel believes therefore it is very likely that the Respondent would have known of the Complainant's ARCELORMITTAL trade mark at the time of registration of the Domain Name.

As such, the Panel finds that the Domain Name was registered and is being used in bad faith within the meaning of 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. **ARCELORMITALS.COM**: Transferred

PANELLISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2016-10-03

Publish the Decision