

Decision for dispute CAC-UDRP-104412

Case number CAC-UDRP-104412

Time of filing 2022-03-14 09:45:53

Domain names aroelormittal.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization ARCELORMITTAL (SA)

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Ben Lopez

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 proprietor of the mark ArcelorMittal (international registration 947686, first registered 3 August 2007, on the basis of the Benelux mark 1135957, and designated in multiple territories), in multiple classes including class 6 (metals).

FACTUAL BACKGROUND

The Complainant, a company with its seat in Luxembourg, is active in steel manufacturing. It operates at a global scale, with over 150,000 employees, manufacturing operations in 17 countries, and customers in over 150 countries, and is the largest steel manufacturer in a number of continents. It operates its own website at ARCELORMITTAL.COM (registered in January 2006).

The Respondent, an individual with an address in Midland, Texas (United States of America), registered the disputed domain name (using a privacy protection service) on 8 March 2022.

PARTIES CONTENTIONS

No administratively complaint response has been filed. The Provider is unaware of whether the written notice of the Complaint was received by the Respondent or not, nor whether e-mail notices were delivered or undelivered. The Respondent never accessed the online platform.

The Complainant submits that all aspects of the Policy are met and that the disputed domain name should be transferred to it. It accompanies its Complaint with relevant evidence in the form of Annexes, referred to as appropriate throughout this Decision.

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).

The difference between the Complainant's mark and the disputed domain name (disregarding in accordance with standard practice the TLD .com) consists of the replacement of the letter C in the word ARCELOR with the letter O. There is no doubt that this is confusingly similar to the Complainant's mark. The Complainant highlights past decisions under the Policy where other minor misspellings of its mark (typosquatting) have been found to be confusingly similar, e.g. WIPO Case No. D2020-3457 ArcelorMittal v Name Redacted <arcelormlital.com>.

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).

The Complainant has declared that the Respondent is not related in any way with the Complainant, that the Complainant does not carry out any activity for, nor has any business with, the Respondent, and has not granted the Respondent any licence or authorisation to make use of its mark or to apply for registration of the disputed domain name.

From the information available to the Panel, it is apparent that the Respondent is not known as the disputed domain name, but as 'BEN LOPEZ'. In light of the Respondent's failure to participate in these proceedings, and the lack of any further information due to the 'parking' of the disputed domain name (meaning that Web users are simply greeted with a template page from a hosting provider), there is no basis on which the Panel can go beyond the prima facie arguments of the Complainant in respect of the absence of rights or legitimate interests on the part of the Respondent.

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).

The Complainant cites a number of past decisions by differently constituted Panels at the present Provider where it has been found that the Complainant's mark is widely known. The Panel accepts this submission, and finds - taking further account of the very small difference between the disputed domain name and the Complainant's mark - that the Respondent would have known of the Complainant and its activities at the point of registering the disputed domain name, and intentionally registered a misspelling of it.

Reliance is placed by the Complainant upon the decision in WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows in respect of the 'passive holding' of the disputed domain name by the Respondent, and on the configuration of MX servers for the future purpose of email by the Respondent (for which evidence was supplied by the Complainant). The Panel accepts the Complainant's contention that 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, which is one of the factors applied in the Telstra line of cases. As well as the above-mentioned point regarding the Respondent's knowledge of the Complainant, the Panel places further due weight on the other aspects of the passive holding doctrine as summarised in the WIPO Jurisprudential Overview, version 3.0, para 3.3., namely that the Respondent failed to take part in the proceedings or provide any evidence of actual or contemplated good-faith use, and that it in the first instance concealed its identity.

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.

Having initially reviewed the Complaint, the Panel identified a likely minor error that had left a section of the Complaint (which was otherwise comprehensive and legible) blank. Taking account of Rule 10(b) (that the Parties are treated with equality and each given a fair opportunity to present its case) and Rule 10(c) (due expedition), read in light of Rule 10(a) (powers of the Panel to conduct proceedings), and further noting the provisions of Rule 12 (power of the Panel to request further statements from a Party), the Complainant was invited to correct the Complaint within 48 hours, and duly did. The Respondent, who did not submit a Response in the first instance, was offered the opportunity to request additional time in order to respond to the updated Complaint, but did not respond to such notice. The Panel therefore, following the expiration of the relevant supplementary deadlines, proceeded to determine the dispute in accordance with the evidence available to it.

PRINCIPAL REASONS FOR THE DECISION

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark ARCELORMITTAL, and that the replacement of one letter with another does not prevent a finding of confusing similarity with the Complainant's mark. It is likely, in light of the nature of the Complainant's mark, that the Respondent would have been aware of the Complainant, and that the situation is one of 'passive holding' as an established form of bad faith use under the Policy (noting further the initial steps taken by the Respondent in respect of the configuration of mail servers). The Panel can find for these reasons that the disputed domain name was registered and is being operated in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. AROELORMITTAL.COM: Transferred

PANELLISTS

Name	Dr Daithi Mac Sithigh
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DATE OF PANEL DECISION 2022-04-15

Publish the Decision