

Decision for dispute CAC-UDRP-104431

Case number	CAC-UDRP-104431
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Time of filing	2022-03-23 09:16:05
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Domain names	arcelormittali.com
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Case administrator

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

Organization	ARCELORMITTAL (SA)
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	NAVAS CESAR
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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 ARCELORMITTAL S.A. 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 71.5 million tones crude steel made in 2020. It holds sizeable captive supplies of raw materials and operates extensive distribution networks as it follows on their website at www.arcelormittal.com.

The Complainant is the owner of the international trademark n° 947686 ARCELORMITTAL registered on 3 August 2007.

The Complainant also owns an important domain names portfolio, including the same distinctive wording ARCELORMITTAL, such as the domain name <arcelormittal.com> registered since 27 January 2006.

The disputed domain name <arcelormittali.com> was registered on 16 March 2022 and resolves to an index page where MX servers are also configured.

The trademark registrations and the domain names registrations predate the registration of the disputed domain name.

FACTUAL BACKGROUND

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

A) The disputed domain name is confusingly similar to the protected mark

The disputed domain name <arcelormittali.com> is confusingly similar to its protected trademark ARCELORMITTAL® by misspelling/typosquatting as it includes the Complainant's trademark in its entirety. The obvious misspelling of the Complainant's trademark ARCELORMITTAL®, i.e. the addition of the letter "l", is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Complainant quotes section 1.9 of the WIPO Overview 3.0 which states that "[a] domain name which consists of a common, obvious, or misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.") and §1.11.1 of the WIPO Overview 3.0 which states "the applicable Top Level Domain ("TDL") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test".

The Complainant recalls:

- WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted <arcelormltal.com>.

B) The Respondent does not have any rights or legitimate interest in the disputed domain name by its non-use/passive holding

The Complainant asserts that the Respondent is not commonly known by a disputed domain name because the Whois information is not similar to the disputed domain name. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <arcelormittali.com> and he is not related in any way with the Complainant. 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 apply for registration of the disputed domain name by the Complainant. The typosquatting in form of a typosquatted version of the trademark ARCELORMITTAL® 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. Moreover, the disputed domain name resolves to an index page. The Complainant contends that Respondent did not use the disputed domain name, and it confirms that Respondent has no demonstrable plan to use the disputed domain name.

The Complainant recalls:

- WIPO Case No. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd.;

- Forum Claim No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group;

- Forum Claim No. 1597465, The Hackett Group, Inc. v. Brian Hems / The Hackett Group.

C) The disputed domain name has been registered and is being used in bad faith

The Complainant's trademark ARCELORMITTAL® is widely known. The Complainant contends that the disputed domain name <arcelormittali.com> is confusingly similar to its distinctive trademark ARCELORMITTAL®. Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

The Complainant recalls:

- WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell;
- Forum Claim No. FA 877979, Microsoft Corporation v. Domain Registration Philippines.

The Complainant alleges that the notoriety of the trademark ARCELORMITTAL® is widely acknowledged. 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. Moreover, the Complainant states the misspelling of the trademark ARCELORMITTAL® was intentionally designed to be confusingly similar with the Complainant's trademark.

The Complainant recalls:

- CAC Case No. 101908, ARCELORMITTAL v. China Capital;
- CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd;
- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

The Complainant contends, based on the facts above, that Respondent has registered the disputed domain name <arcelormittali.com> and is using it in bad faith. The MX servers are configured which suggests that it may be actively used for email purposes and that there is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.

The Complainant recalls:

- CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono;
- WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

The Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed allegations 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 because of the Respondent's failure to submit a response.

Therefore, in the absence of a response, it is appropriate to accept as true all allegations of the Complainant.

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

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.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs the 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 complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

(ii) respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

The Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations because of the Respondent's failure to submit a response. Therefore, it accepted as true all allegations of the Complainant.

A. THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO A TRADEMARK IN WHICH THE COMPLAINANT HAS RIGHTS

Section 1.9 of the WIPO Overview 3.0 stipulates that "[a] domain name which consists of a common, obvious, or misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.") and §1.11.1 of the WIPO Overview 3.0 stipulates that "the applicable Top Level Domain ("TDL") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test".

The Panel concludes that the disputed domain name <arcelormittali.com> is confusingly similar to the protected trademark ARCELOMITTAL® as it includes the Complainant's trademark in its entirety. The obvious misspelling of the Complainant's trademark ARCELOMITTAL®, i.e. the addition of the letter "l", is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. The addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

The Panel therefore finds that the disputed domain name is 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).

B. RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTEREST IN THE DISPUTED DOMAIN NAME

The Panel does not find that the Respondent is commonly known by a disputed domain name because the Whois information is not similar to the disputed domain name. The name of the Respondent is NAVAS CESAR so that the Respondent has no rights or legitimate interests in respect of the disputed domain name <arcelormittali.com> and he is not related in any way with the Complainant. 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 apply for registration of the disputed domain name by the Complainant. The typosquatting in form of a typo squatted version of the trademark ARCELORMITTAL® 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 Panel finds that the disputed domain name resolves to an index page. The Respondent does not prove that it did use the disputed domain name, and that confirms that it has no demonstrable plan to use the disputed domain name.

The Panel therefore finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

C. THE DISPUTED DOMAIN NAME WAS REGISTERED AND IS USED IN BAD FAITH

The Panel finds that the Complainant's trademark "ARCELLORMITTAL" is distinctive and well known all around the world. The fact that the Respondent has registered a disputed domain name that is confusingly similar to the Complainant's trademark indicates that the Respondent would have had knowledge of this trademark at the time of registration of the disputed domain name. Given the distinctiveness of the Complainant's trademark and reputation, it is not unreasonable to infer that the Respondent has registered the 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 and therefore the Respondent has registered the disputed domain name <arcelormittali.com> and is using it in bad faith. It is well known that the MX servers, to which the disputed domain name directs its users, are configured for the clear purpose that it may be actively used for email communication and that there is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. The Panel finds that it is inconceivable that the Respondent is able to make any good faith use of the disputed domain name as part of an e-mail address.

The Panel concludes therefore that the overall circumstances of this case suggest that the disputed domain name was registered and is being used in bad faith and the Complainant has satisfied 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. **ARCELORMITTALI.COM:** Transferred

PANELLISTS

Name	JUDr. Vojtěch Trapl
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DATE OF PANEL DECISION	2022-04-19
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Publish the Decision
