

Decision for dispute CAC-UDRP-104478

Case number	CAC-UDRP-104478
Time of filing	2022-04-07 08:33:36
Domain names	arcelormittalonline.com, arcelormittalservices.com

Case administrator

Organization	Denisa Bilík (CAC) (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	bill chill
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- International trade mark registration no. 947686, dated 3 August 2007, for the word mark ARCELORMITTAL, in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 of the Nice Classification.

(hereinafter, the Complainant's trade mark; and the ARCELORMITTAL trade mark and the trade mark ARCELORMITTAL interchangeably).

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

I. The disputed domain names are confusingly similar to a trade mark in which the Complainant has rights

The Complainant states that it 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.

In addition to the trade mark mentioned above, the Complainant also owns numerous domain names, including <arcelormittal.com>, which was registered on 27 January 2006.

The disputed domain names <arcelormittalonline.com> and <arcelormittalservices.com> were both registered on 29 March 2022 (“the disputed domain names”). The websites to which the disputed domain names resolve are currently inactive, although the MX servers are configured.

The Complainant avers that the disputed domain names are confusingly similar to the Complainant’s trade mark ARCELORMITTAL, in so far as they incorporate the Complainant’s trade mark in its entirety. The addition of the generic terms “online” and “services” is insufficient to escape the finding that the disputed domain names are confusingly similar to the Complainant’s trade mark ARCELORMITTAL. Moreover, the generic Top-Level Domain (“gTLD”) suffix (“.com”) is typically disregarded in the assessment of identity or confusing similarity under paragraph 4(a) of the Policy.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain names

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent does not carry out any activity for, or has any business with, the Complainant. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant’s trade mark, or to apply for registration of the disputed domain names on the Complainant’s behalf.

The Complainant also asserts that the Respondent is not known by the disputed domain names.

Lastly, the Complainant argues that the disputed domain names resolve to error webpages, and that the Respondent do not use the disputed domain names. This confirms that the Respondent has no demonstrable plan to use the disputed domain names.

III. The Respondent registered and is using the disputed domain names in bad faith

Registration

The Complainant states that the trade mark ARCELORMITTAL is well-known and distinctive, and that its notoriety has been acknowledged in prior UDRP decisions, namely: CAC Case No. 101908, ARCELORMITTAL v China Capital; and CAC Case No. 101667, ARCELORMITTAL v Robert Rudd.

The Complainant further states that, given the distinctiveness and reputation of the trade mark ARCELORMITTAL, it is inconceivable that the Respondent could have registered the disputed domain names without actual knowledge of the Complainant’s trade mark ARCELORMITTAL.

Use

The Complainant avers that whilst the disputed domain names are currently inactive, MX servers are configured nonetheless. In addition, the Respondent has not demonstrated any activity in respect of the disputed domain names, and it is not possible to conceive any plausible actual or contemplated active use of the disputed domain names that would not be illegitimate, such as through passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trade mark law.

Finally, the Complainant cites WIPO UDRP decisions to support its contention that the incorporation of a famous trade mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain names in bad faith.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain names are identical or 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 disputed 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 disputed 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 UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy provides the following threshold for the Complainant to meet in order to divest the Respondent of the disputed domain names:

- i. The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- iii. The disputed domain names have been registered and is being used in bad faith.

It is therefore incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three Policy elements in turn.

I. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in "ARCELORMITTAL" since 2007.

The disputed domain names are <arcelormittalonline.com> and <arcelormittalservices.com>, and the Complainant's trade mark is ARCELORMITTAL.

The Panel has no difficulty in finding that the disputed domain names are confusingly similar to the Complainant's trade mark ARCELORMITTAL, within the meaning of paragraph 4(a)(i) of the UDRP Policy.

The additional generic terms “online” and “services” have the effect of enhancing the confusing similarity as they evoke the Complainant’s offering of services on the Internet. Furthermore, and as rightly noted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of a domain name’s “backbone”.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

II. Rights or Legitimate Interests

The Respondent has defaulted in these UDRP proceedings. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent’s silence (UDRP Rule 14 (b)).

The Panel notes that the Complainant firmly denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain names; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain names.

The Respondent has submitted no evidence to refute any of the Complainant’s assertions.

On balance, the Panel considers the available evidence to lend credence to the Complainant’s contentions.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

III. Registered and Used in Bad Faith

Registration

The following facts are compelling evidence to this Panel that the disputed domain names were registered in bad faith:

- The Complainant has been in operation since at least 2007, with a presence in Sweden, including in Karlstad, where the Respondent appears to be based;
- The Complainant operates its activities through the domain name <arcelormittal.com>, which was registered in 2006;
- The disputed domain names <arcelormittalonline.com> and <arcelormittalservices.com> were both registered on 29 March 2022; and
- UDRP panels have found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark can by itself create a presumption of bad faith (WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 3.1.4 (“WIPO Jurisprudential Overview 3.0”)), and the Panel accepts that the Complainant’s trade mark is widely known.

Use

At the time of writing, the disputed domain names do not resolve to active websites (“the Respondent’s websites”).

The Complainant avers that, even though the Respondent’s websites are inactive, MX servers are configured. This suggests that the disputed domain names may be used by the Respondent for the purpose of handling email messages.

The Complainant appears to refer to the Respondent as being engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

“(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 the respondent’s website or location or of a product or service on the respondent’s website or location.”

In order to determine this Policy ground, the Panel refers in tandem to paragraphs 3.1.1 and 3.1.4 of the WIPO Jurisprudential Overview 3.0, according to which panels have found various types of evidence to support a finding under the above circumstances. The most compelling factors in the present matter are: (i) the Respondent’s likely knowledge of the Complainant’s rights, (ii) the distinctiveness of the Complainant’s trade mark; (iii) the probable likelihood of confusion between the disputed domain names and the Complainant’s trade mark; (iv) the lack of the Respondent’s own rights to, or legitimate interests in, the disputed domain names; (v) the failure of the Respondent to present a credible-backed rationale for registering the disputed domain names; and (vi) the absence of any conceivable good faith use of the disputed domain names.

The Panel considers that all of the above elements are present in these UDRP proceedings, such that the Complainant shall prevail.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **ARCELOMITTALONLINE.COM**: Transferred
- 2. **ARCELOMITTALSERVICES.COM**: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION 2022-05-03

Publish the Decision