

Decision for dispute CAC-UDRP-104510

Case number	CAC-UDRP-104510
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Time of filing	2022-04-20 09:23:16
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Domain names	arccelormittals.com
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Case administrator

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

Organization	ARCELOMITTAL (SA)
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	douglas inc
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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 has shown by evidence that the Panel accepts that it is the owner of the international trademark no.947686 for ARCELOMITTAL, registered on August 3, 2007.

FACTUAL BACKGROUND

Complainant is the largest steel producing company in the world.

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

The Complainant also owns an important domain names portfolio, including the domain name <arcelormittal.com> that has been registered since January 27, 2006.

The disputed domain name <arccelormittals.com> was registered on April 12, 2022 and resolves to a parking page with commercial links.

The Complainant has been concerned that the Respondent has taken its ARCELORMITTAL trademark without any authorization to do so, has made two minor spelling alterations to the mark, used it to create the <arccelormittals.com> domain name, caused it to resolve to webpages that promote commercial offerings and used it to give the false impression that it is an official domain name of the Complainant that will lead to its official website, neither of which is true.

Accordingly, the Complainant has brought this proceeding to have the domain name transferred to itself.

PARTIES CONTENTIONS

CONTENTIONS OF THE PARTIES

COMPLAINANT

The following is a summary of the contentions made by the Complainant.

1. The Complainant is the registered owner of the ARCELORMITTAL trademark and as such has rights in that trademark.
2. The Respondent registered the disputed domain name on April 12, 2022.
3. The disputed domain name is confusingly similar to the ARCELORMITTAL trademark because it consists of the trademark with two minor alterations having been made to its spelling.
4. The Respondent has no rights or legitimate interests in the disputed domain name because the Respondent had no authority to register it, is not commonly known by the domain name, the domain name is confusingly similar to the trademark and it is being used for the promotion of links making other commercial offerings to internet users.
5. The Respondent registered and is using the domain name in bad faith because the trademark is so well known that the Respondent must have known of it when it registered the confusingly similar domain name without authority, it generates confusion between the trademark and the links appearing on the Respondent's website, and the links are designed to attract internet users to the Respondent's website for commercial gain by the Respondent.

The appropriate relief in these circumstances is for the Panel to order that the disputed domain name be transferred to the Complainant.

RESPONDENT

The Respondent did not file a Response in this proceeding.

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

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”) of the Internet Corporation for Assigned Names and Numbers (“ICANN”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the CAC Supplemental Rules.

A. Administrative compliance

By notification dated April 20, 2022 and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complaint did not sufficiently identify the Respondent. The notification invited the Complainant to have regard to the Registrar’s verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder. Also on April 20, 2022, the Complainant filed an Amended Complaint and the CAC then determined that the Complaint should be admitted to proceed further in the Administrative Proceeding.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B. Substantive matters

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In that regard, the Panel also notes that the onus is on the complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) The 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 will therefore deal with each of these requirements in turn.

A. Identical or Confusingly Similar

The Complainant has adduced evidence which the Panel accepts that it is the registered owner of the ARCELORMITTAL trademark and as such has rights in that trademark.

The Panel next finds that the disputed domain name <arccelormittals.com> is confusingly similar to the ARCELORMITTAL trademark for the following reasons.

First, the <arccelormittals.com> domain name includes the entirety of the ARCELORMITTAL trademark and does not include any wording other than the trademark, albeit with some minor spelling alterations. Accordingly, the domain name would inculcate in the mind of any internet user who saw it that it was in fact the well-known ARCELORMITTAL mark and hence an official domain name of the Complainant that would lead to an equally official website of the Complainant.

Secondly, the <arccelormittals.com> domain name includes two minor spelling alterations to the trademark. An additional letter “c” has been added to the word, after the first “c” of the trademark and an additional letter “s” has also been added which turned the word into a plural version. Clearly, the internet user would think that these two amendments were minor spelling alterations to ARCELORMITTAL, as they are, but that the main thrust of the domain name is that it reflects the famous industrial name and trademark ARCELORMITTAL.

Thirdly, taken as a whole, the <arccelormittals.com> domain name would convey to the objective bystander that it related to the activities of the Complainant, giving rise to inevitable confusion.

Here, it is often said that confusing similarity will exist, as in the present case, despite the fact that small spelling alterations have been made. That is true, but it is also true that confusing similarity will exist because the spelling alterations in fact enhance and draw attention to the domain name as the well-known trademark itself.

It is also now well established that the addition of a generic top-level domain, such as “.com” in the present case, cannot negate confusing similarity that is otherwise present, as it is in this case.

Accordingly, the Panel finds that the <arccelormittals.com> domain name is confusingly similar to the Complainant’s ARCELORMITTAL trademark. The Complainant has thus shown the first of the three elements that it must establish.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the <arccelormittals.com> domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or

legitimate interests and that when such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name.

That prima facie case is made out from the following considerations.

The evidence of the Complainant is that the Respondent is not related in any way to the Complainant's business, is not affiliated with the Complainant or authorized by it in any way to use the trademark ARCELORMITTAL and does not carry out any activity for, nor has any business with, the Complainant.

It is also clear from the evidence that the Respondent is not commonly known by the domain name under Policy 4(c)(ii).

Moreover, the essence of this proceeding is that the Respondent has engaged in typosquatting, which means that it has deliberately altered the spelling of the trademark to deceive and trick internet users into thinking that the <arcelormittals.com> domain name is an official domain name of the Complainant and that it will lead to an official website of the Complainant, neither of which is true. Clearly, such conduct cannot give rise to a right or legitimate interest in the domain name.

The disputed domain name points to a parking page with commercial links in relation to the Complainant and its competitors. It is now well established that such conduct cannot give rise to a right or legitimate interest in the domain name and the Panel so holds in the present proceeding. The reason why that is so, is a valid one, namely that the Respondent is using the Complainant's trademark to earn money for itself under color of the Complainant's name and trademark.

These facts give rise to the prima facie case made out by the Complainant.

The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default. Accordingly, the prima facie case has not been rebutted and the Complainant has made out the second of the three elements that it must establish.

C. Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith: *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 site or location.

The Panel finds that the Complainant has shown that the Respondent registered and used the <arccelormittals.com> domain name in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b) (iv) of the Policy and probably within other provisions of paragraph 4 (b) as well.

That is so for the following reasons.

The Complainant first submits that it is reasonable to infer that Respondent was aware of Complainant and its well-known trademark at the time of registration of the disputed domain name. The Panel agrees. Because of the fame and strong reputation of the ARCELORMITTAL trademark, the Respondent must have been aware of the existence of the Complainant and its reputation when it registered the disputed domain name. The Panel finds that it is highly likely that the Respondent chose the trademark to invoke the concept of the Complainant, its fame and its activities. By that means the Respondent, in registering the domain name deceptively and without any authority to do so, must be taken to have created a likelihood of confusion, with the intention of attracting current and potential customers of the Complainant looking for its services and doing so in this misleading manner. Accordingly, the domain name was registered in bad faith.

Secondly, and as already noted, the Complainant submits that the disputed domain name points to a parking page with commercial links ("PPC"). The Panel accepts the Complainant's evidence to that effect. Thus, the Complainant contends that the Respondent registered the disputed domain name primarily for the purpose of deceptively attracting internet users to its own website for commercial gain. That conduct is clearly in bad faith and the Panel so holds. The Panel also notes that there are many UDRP decisions to that effect.

Thirdly, the evidence leads to the conclusion that the Respondent registered the <arccelormittals.com> domain name to attract, for commercial gain, internet users to its web site. By clicking on these links, internet users are redirected to a webpage in which sponsored links to the websites of other commercial parties that are competitors of the Complainant are offered. These facts bring the case squarely within paragraph 4(b)(iv) of the UDRP, i.e. "by using the domain name, (the Respondent) ... intentionally attempted to attract, for commercial gain, Internet users to (its) web site 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 (its) web site or location or of a product or service on (its) web site or location".

Fourthly, the conduct of the Respondent also amounts to a probable intention to try to sell the <arccelormittals.com> domain name within the meaning of paragraph 4(b)(i), intending to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name within the meaning of paragraph 4(b) (ii) and intending to disrupt the business of the Complainant within the meaning of paragraph 4(b)(iii).

Fifthly, in addition and having regard to the totality of the evidence, the Panel finds that, in view of Respondent's registration of the disputed domain name using the ARCELORMITTAL mark and in view of the conduct that Respondent has engaged in when using the domain name, Respondent registered and used it in bad faith within the generally accepted meaning of that expression.

As the Complainant submits, such conduct has been held by previous UDRP panels to constitute bad faith registration and use.

Accordingly, the Complainant has shown the third and consequently all of the three elements that it must establish and hence is entitled to the relief it seeks.

Accepted

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

- 1. **ARCCELORMITTALS.COM**: Transferred

PANELLISTS

Name	The Hon. Neil Brown, QC
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DATE OF PANEL DECISION	2022-05-14
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Publish the Decision