

Decision for dispute CAC-UDRP-104654

Case number CAC-UDRP-104654

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Domain names de-arcelormittal.com

Case administrator

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

Complainant

Organization ARCELORMITTAL (SA)

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization ArcelorMittal Germany Holding GmbH

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 - ARCELOR MITTAL S.A. - relies on international verbal trademark no. 947686 <ArcelorMittal> registered on 3 August 2007 for goods/services in classes 6, 7, 9,12, 19, 21, 39, 40, 41, 42, designating amongst others the European Union, where the Respondent indicates to be located.

FACTUAL BACKGROUND

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

The disputed domain name <de-arcelormittal.com> has been registered on 28 April 2022. The language of the registration agreement is German.

The disputed domain name does currently not resolve to any active website but to a default site ("Ce site est inaccessible").

Finally, the Complainant states that the Respondent is not affiliated with the Complainant. Furthermore, the Complainant did not grant any licence or authorization to the Respondent to make any use, or apply for registration of the disputed domain

name.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

1.

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.

2.

Furthermore, taking account the interest of fairness and to preserve continuity in the case, the Panel decides English to be the language of the present proceeding:

Panels have recognized that a preliminary determination by the WIPO Center may be necessary where a party requests for the proceeding to be administered in a language other than that of the registration agreement. In the case at hand, the Complainant requests for the proceedings to be administered in English language.

The Panel acknowledges that the WIPO Center notified both parties in German and English language of the discrepancy between the language of the registration agreement and the Complaint. The Complainant formally submitted a motivated request that the proceedings be conducted in English language.

Paragraph 10 of the UDRP Rules vests the Panel with authority to conduct the proceedings in a manner it considers appropriate while also ensuring both that the parties are treated with equality, and that each party is given a fair opportunity to present its case. The Respondent did not reply to this request and did not actively participate in these proceedings.

Against this background, the Panel also notes: (i) English is a common business language; (ii) the TLD “.com” has a supranational character; and (iii) that translating the Complaint and the annexes would cause significant expenses and delay while the Respondent is not participating in this proceeding. The Panel would have accepted a Response in English or German, but no Response was submitted.

PRINCIPAL REASONS FOR THE DECISION

1.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Many panels have

found that a domain name is confusingly similar to a complainant's trademark where it incorporates the complainant's trademark in its entirety. It is true that in the case at hand, the Complainant's registered trademark <ArcelorMittal> is fully included in the disputed domain name. The addition of the letters "de-" will be commonly understood as a reference to Germany and therefore as a geographic indication which cannot exclude the confusing similarity between the disputed domain name and the Complainant's registered mark.

2.

In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case and that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In particular and despite the company name used by the Respondent (which corresponds to the Complainant's German establishment), the latter is not affiliated with, nor authorized by the Complainant in any way, and it is not related in any way to the Complainant's business. This is particularly evidenced by the email-address used by the Respondent and which is not connected to the Complainant.

In addition, the Respondent is not commonly known by the disputed domain name pursuant to paragraph 4(c)(ii) of the Policy.

Finally, no content is displayed on the website to which the disputed domain name resolves. Such use can neither be considered a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

3.

Finally, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

It is the view of this Panel that the Respondent has intentionally registered the disputed domain name, which almost identically reproduces the Complainant's trademark. The Panel is convinced that by the time the disputed domain name was registered, the Respondent had positive knowledge of the Complainant's rights on its trademark, in fact it used the company name and address of the Complainant's German subsidiary as Registrant name/address; in doing so, the Respondent attempts to pass itself off as the Complainant's German subsidiary.

In addition, the Panel considers that the fact that the disputed domain name resolves to an inactive webpage does not prevent a finding of bad faith. In this regard, this Panel shares the view expressed at point 3.3. in the WIPO Jurisprudential Overview 3.0: "From the inception of the UDRP, panellists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While panellists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put". In the case at hand, the Panel takes into consideration not only (1) the distinctiveness of the Complainant's trademark, but also (2) the clear absence of rights or legitimate interests coupled with no response to the Complaint with conceivable or credible explanations of the Respondent's conduct, and (3) the implausibility of any good faith uses to which the disputed domain name may be put.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. DE-ARCELORMITTAL.COM: Transferred

PANELLISTS

Name **Dr. Tobias Malte Müller**

DATE OF PANEL DECISION **2022-07-22**

Publish the Decision
