

Decision for dispute CAC-UDRP-104704

Case number	CAC-UDRP-104704
Time of filing	2022-07-08 09:13:21
Domain names	arcelormittal-polski.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	Anonymous Anonymous
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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 holder of the following registered trademark:
- ArcelorMittal, International word mark registration No. 947686, registered on August 3, 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

FACTUAL BACKGROUND

The Complainant is the largest steel-producing company in the Americas and Europe and is the market leader in steel for use in automotive, construction, household appliances, and packaging, with approximately 158,000 employees in 2021. The Complainant is the holder of the registered word mark ARCELORMITTAL in several classes in numerous countries and regions worldwide.

The disputed domain name <arcelormittal-polski.com> was registered on June 28, 2022 and appears to be inactive.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT: The Complainant considers the disputed domain name confusingly similar to a trademark in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent is not known by the disputed domain name and is not related to the Complainant. Also, according to the Complainant, the Respondent does not use and has no demonstrable plan to use the disputed domain name in connection with any legitimate use. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends that the Respondent must have known of the existence of the Complainant's trademark given its distinctiveness and reputation. According to the Complainant, the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate. The Complainant claims that MX records are configured, which suggests that the disputed domain name may be actively used for email purposes. In the Complainant's view, 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.

RESPONDENT: The Respondent did not reply to the Complainants' contentions.

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

The onus is on the complainant to make out its case, and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the complainant to succeed, it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities, that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The Respondent has no rights or legitimate interests in respect of the domain name; and
3. The domain name has been registered and is being used in bad faith.

The Panel has therefore dealt with each of these requirements in turn.

1. Confusing similarity of the disputed domain name with existing rights

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered ARCELORMITTAL trademark, which is used in connection with the Complainant's business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name incorporates the Complainant's ARCELORMITTAL trademark in its entirety, merely adding a hyphen and the term "polski", which means "Polish". The Panel finds that as the relevant trademark is clearly recognizable within the disputed domain name, the addition of another term does not prevent a finding of confusing similarity (See section 1.8, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")).

Additionally, it is well established that the generic top-level suffix ".com" may be disregarded when considering whether the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No 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.

It is established case law that it is sufficient for the Complainant to make a prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling (45FHH)*, WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is "Anonymous Anonymous". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. In this case, the Panel finds that there is a risk of implied affiliation as the disputed domain name includes the Complainant's distinctive ARCELORMITTAL trademark in its entirety and simply adds the term "polski". In view of the Complainant's global activities, the Panel finds that this combination could be considered to refer to a Polish website of the Complainant.

Moreover, the Panel is of the opinion that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. In fact, the Respondent is not making any use of the disputed domain name in connection with an active website.

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Based on the available record, the Panel finds that the Complainant has established a prima facie case, which was not refuted, and that the Respondent lacks rights or legitimate interests in the disputed domain name. Therefore, the Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (See e.g. Telstra Corporation Limited v. Nuclear Marshmallow, WIPO Case No. D2000-0003; Control Techniques Limited v. Lektronix Ltd, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz, WIPO Case No. D2011-2209; Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite, WIPO Case No. D2001-1070). In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the ARCELORMITTAL trademark at the moment it registered the disputed domain name, since the disputed domain name incorporates the Complainant's distinctive ARCELORMITTAL trademark in its entirety in combination with a word who could refer to the Polish activities of the Complainant.

Moreover, the well-known character of the Complainant's ARCELORMITTAL trademark has been confirmed by previous UDRP Panels:

- CAC Case No. 101908, ARCELORMITTAL v. China Capital ("The Complainant has established that it has rights in the trademark "ArcelorMittal", at least since 2007. The Complainant's trademark was registered prior to the registration of the disputed domain name (February 7, 2018) and is widely well-known.");
- CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd ("The Panel is convinced that the Trademark is highly distinctive and well-established.").

UDRP panels have found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark:

- seeking to cause confusion for the respondent's commercial benefit, even if unsuccessful;
- the lack of a respondent's own rights to or legitimate interests in a domain name;
- absence of any conceivable good faith use (see section 3.1.4 WIPO Overview 3.0).

In the present case, the Panel finds that the very nature of the disputed domain name suggests an intention to cause confusion. As mentioned above, the disputed domain name incorporates the Complainant's distinctive ARCELORMITTAL trademark in its entirety in combination with a word who could refer to the Polish activities of the Complainant. The uncontested lack of the Respondent's own rights to or legitimate interests in the disputed domain name has already been mentioned above. Finally, given the distinctive and well-known character of the Complainant's mark, the Panel finds it difficult to conceive any plausible good faith use of the disputed domain name by the Respondent in the future.

The Complainant claims that MX records are configured, which would suggest that the disputed domain name may be actively used for email purposes. The Panel finds the Complainant's evidence inconclusive in that regard, and the Panel could not find any active MX records linked to the disputed domain name based on its own limited research. However, in the circumstances of this case, the Panel finds that the use of the disputed domain name for fraudulent activity cannot be excluded, e.g. by profiting of the likelihood of confusion with the Complainant's trademark for phishing activities through the sending of emails.

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent's bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. ARCELORMITTAL-POLSKI.COM: Transferred

PANELLISTS

Name	Flip Petillion
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DATE OF PANEL DECISION 2022-08-12

Publish the Decision
