

Decision for dispute CAC-UDRP-104843

Case number	CAC-UDRP-104843
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Time of filing	2022-09-13 09:39:51
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Domain names	arcelormitai.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	L M
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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 is a steel producer and the owner of the ARCELORMITTAL mark for which it owns the following registration international trademark ARCELORMITTAL, registration number 947686 registered on August 3, 2007 for goods and services in international classes 6, 7, 9, 12, 19, 21, 39, 40, 41, 42.

FACTUAL BACKGROUND

The Complainant is the owner of the ARCELORMITTAL mark for which it owns the above-mentioned international trademark and service mark which it extensively uses in its business as a market leader in the production of steel for use in automotive, construction, household appliances and packaging having produced 69.1 million tonnes crude steel made in 2021.

The Complainant has an established Internet presence and owns a portfolio of domain names that includes its own <arcelormittal.com>, which was registered since January 27, 2006 and is used as the address of its main website.

The disputed domain name <arcelormitai.com> was registered on September 6, 2022. It resolves to an inactive page but is also configured to an MX server to receive email traffic.

There is no information available about the Respondent, except for that provided in the Complaint, the Registrar's WhoIs and the

information provided by the Registrar in response to the request by the Center for verification of the registration details of the disputed domain name in the course of this proceeding.

PARTIES CONTENTIONS

The Complainant claims rights in the ARCELORMITTAL mark established by its ownership of the abovementioned trademark registration and its use of the mark in its business as the largest steel producing company in the world, being a market leader in the production of steel for use in automotive, construction, household appliances and packaging having produced 69.1 million tonnes crude steel made in 2021.

The Complainant adds that it also owns an important domain names portfolio, such as the domain name <arcelormittal.com> registered since January 27, 2006 and has exhibited a screen capture of its website to which the <arcelormittal.com> domain name resolves.

Alleging that the disputed domain name <arcelormitai.com> is identical or confusingly similar to its ARCELORMITTAL trademark and service mark, the Complainant argues that the disputed domain name is an obvious misspelling of the mark.

The Complainant alleges that the disputed domain name is composed of the Complainant's ARCELORMITTAL mark with the second letter "t" deleted and the letter "i" in the mark substituted by the letter "l" in the disputed domain name, which the Complainant submits is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the dispute domain name.

Previous panels have found that such slight spelling variations will not prevent a finding that a domain name at issue is confusingly similar to a complainant's trademark. See *ArcelorMittal (Société Anonyme) v. Name Redacted* WIPO Case No. D2020-3457, ("As the (arcelormitai.com) domain name differs from the Complainant's trademark by just two letters, it must be considered a prototypical example of typosquatting – which intentionally takes advantage of Internet users that inadvertently type an incorrect address (often a misspelling of the complainant's trademark) when seeking to access the trademark owner's website.)

Referring to the WIPO Overview 3.0 at section 1.11.1, the Complainant submits that the generic Top Level Domain ("gTD") extension <.com> should be viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test.

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name, arguing that the Respondent is not known as the disputed domain name, and past panels have held that a respondent was not commonly known by a disputed domain name if, as in the present case, the stated name of the registrant on in the Whois information for the domain name at issue was not similar to the disputed domain name. See *Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group* Forum Case No. FA 1781783, <bobsfromsketchers.com> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).").

The Complainant asserts that the Respondent is not related in any way with the Complainant and adds that the Complainant does not carry out any activity for, nor has any business with the Respondent.

The Complainant adds that it has not granted the Respondent any license or authorization to make any use of the Complainant's ARCELORMITTAL mark, or to apply for registration of the disputed domain name which the Complainant alleges was registered in an act of typosquatting in an attempt to take advantage of Internet users' typographical errors which is also evidence that the Respondent lacks rights and legitimate interests in the domain name. See *The Hackett Group, Inc. v. Brian Hens / The Hackett Group*, Forum Case FA 1597465, ("The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy ¶ 4(a)(ii).").

Referring to a screen capture of the website to which the disputed domain name resolves which is exhibited in an annex to the Complaint, the Complainant further contends that the Respondent has not made any use of disputed domain name since its registration. The exhibited screen capture shows that the disputed domain name resolves to an inactive web page with a statement that the website is inaccessible. which it is alleged, confirms that the Respondent has no demonstrable plan to use the disputed domain name. See *Boeing Co. v. Bressi* WIPO Case No. D2000-1164, ("the Respondent has advanced no basis on which he could conclude that it has a right or legitimate interest in the domain names").

The Complainant next alleges that the disputed domain name was registered and is being used in bad faith.

The Complainant contends that the disputed domain name <arcelormitai.com> is confusingly similar to its distinctive and widely known ARCELORMITTAL registered trademark and past panels have confirmed the notoriety of the ARCELORMITTAL trademark in the following cases: *ARCELORMITTAL v. China Capital CAC* Case No. 101908 ("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."); *ARCELORMITTAL v. Robert Rudd CAC* Case No. 101667, ("The Panel is convinced that the Trademark is highly distinctive and well-established.").

The Complainant argues that given the distinctiveness and reputation of the Complainant's trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the mark. See *ArcelorMittal SA v. Tina Campbell* WIPO Case No. DCO2018-0005, ("The Panel finds that the trademark ARCELORMITTAL is so well-known internationally for metals and steel

production that it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it.”).

Moreover, the Complainant adds that the misspelling of the ARCELORMITTAL trademark in the disputed domain name was intentionally designed to be confusingly similar to the Complainant’s mark, and previous panels established under the Policy have seen such actions as evidence of bad faith. See *Microsoft Corporation v. Domain Registration Philippines*, Forum Case No. FA 877979, (“In addition, Respondent’s misspelling of Complainant’s MICROSOFT mark in the <microsoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy 4(a) (iii).”).

Noting that the exhibited screen capture shows that the disputed domain name resolves to an inactive page, the Complainant contends that 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, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant’s rights under trademark law.

The Complainant submits that previous panels established under the Policy have held that the incorporation of a famous mark into a domain name at issue, coupled with an inactive website, may be evidence of bad faith registration and use. See *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No. D2000-0003.

Finally, the Complainant refers to a further screen capture which is exhibited in an annex to the Complaint, which shows that a search has revealed that MX servers are configured to the disputed domain name, which the Complainant argues suggests that the disputed domain name may be actively used for email purposes. See *JCDECAUX SA v. Handi Hariyono* CAC Case No. 102827, (“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.”).

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

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

The Complainant has provided uncontested evidence of its ownership and use of the ARCELORMITTAL mark trademark and service mark, established by its ownership of its international trademark and service mark registration described above and extensive use of the mark in providing its Internet services.

The disputed domain name <arcelormitai.com> is almost identical to the ARCELORMITTAL mark, except that the second letter “t” in the mark has been deleted and the letter “l” in the mark substituted by the letter “i” in the disputed domain name. On the balance of probabilities Internet users are likely to be confused by this misspelling.

In the context of this Complaint the gTLD extension <.com> would be considered by Internet users as a necessary technical requirement

for a domain name and therefore does not prevent a finding of confusing similarity between the disputed domain name and Complainant's ARCELORMITTAL mark.

This Panel finds therefore that the disputed domain name <arcelormitai.com> is confusingly similar to the ARCELORMITTAL mark in which the Complainant has rights and the Complainant has therefore succeeded in the first element of the test in paragraph 4(a)(i) of the Policy.

The Complainant has made out a prima facie case that the Respondent has no rights legitimate interests in the disputed domain name arguing that:

- the Respondent is not known as the disputed domain name;
- the stated name of the registrant on in the Whois information for the disputed domain name at issue is not similar to the disputed domain name;
- the Respondent is not related in any way with the Complainant; and
- the Complainant does not carry out any activity for, the Respondent; and
- the Complainant has no business with the Respondent;
- the Complainant has not granted the Respondent any license or authorization to make any use of the Complainant's trademark ARCELORMITTAL, or to apply for registration of the disputed domain name which was registered in an attempt to take advantage of Internet users' typographical errors;
- the Respondent has not made any use of disputed domain name since its registration and resolves to an inactive website;
- the screen capture of the website to which the disputed domain name resolves which is exhibited in an annex to the Complaint shows that the disputed domain name resolves to an inactive web page with a statement in the French language to the effect that the website is inaccessible. which confirms that the Respondent has no demonstrable plan to use the disputed domain name.

It is well established that once a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant has therefore succeeded in the second element of the test in paragraph 4(a)(ii) of the Policy.

It is implausible that the disputed domain name was registered without knowledge of the ARCELORMITTAL mark and Complainant's rights and goodwill.

The ARCELORMITTAL is very distinctive and the evidence is that, when the disputed domain name was chosen and registered on September 6, 2022, by which time the Complainant had already an established international reputation in the use of the mark which it had registered as early as August 3, 2007.

On the balance of probabilities therefore, this Panel finds that it is implausible that the disputed domain name, which is almost identical to the ARCELORMITTAL mark, was chosen and registered or any reason other than to create the impression of an association with the Complainant's name and mark.

This Panel finds therefore that on the balance of probabilities the disputed domain name was chosen and registered in bad faith because of its similarity with the Complainant's mark, in an act of typosquatting, to target and take predatory advantage of Complainant's mark and goodwill in the Complainant's ARCELORMITTAL mark.

The uncontested evidence shows that the disputed domain name does not resolve to any active website but that it has been configured to an MX server which would allow receipt of emails from an email account established using the disputed domain name.

Given the strength of the ARCELORMITTAL; that the disputed domain name was on the balance of probabilities composed to be a misspelling of the Complainant's mark to create an impression of an association between the mark and the disputed domain name; that on the balance of probabilities the Respondent chose and registered the disputed domain name as in intentional misspelling of the mark in an act of typosquatting; that the Respondent has failed to show any rights or legitimate interests in the disputed domain name or to engage with this proceeding in any way; and that while the exhibited screen capture shows that the disputed domain name does not resolve to any active website but to a message in the French language which states that the website is inactive, it of concern that it has been configured to an MX server which allows the Respondent to use the disputed domain name to receive emails; this Panel finds that on the balance of probabilities the passive holding of the disputed domain name constitutes use in bad faith for the purposes of the Policy.

As this Panel has found that the disputed domain name was registered and is being used in bad faith, Complainant has succeeded in the third element of the test in 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. **arcelormitai.com**: Transferred

PANELLISTS

Name	James Bridgeman
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DATE OF PANEL DECISION	2022-10-17
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Publish the Decision
