

## Decision for dispute CAC-UDRP-104943

Case number	CAC-UDRP-104943
Time of filing	2022-10-24 09:52:55
Domain names	arcelormittalshareholders.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

Organization	Clearer Technology
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### Respondent representative

Organization	Envisage Law
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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 submitted evidence that it is the owner of the international trademark "ArcelorMittal" (wordmark), no. 947686, registered on 3 August 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42, valid in various countries (hereinafter the "Complainant's Trademark").

The Complainant also submitted evidence that it is has registered the domain name <arcelormittal.com> on 27 January 2006.

## FACTUAL BACKGROUND

The Complainant is a major steel producing company, active worldwide, and the market leader in steel for use in automotive, construction, household appliances and packaging.

The Complainant is the owner of the Complainant's Trademark and of various domain names, such as the domain name <arcelormittal.com> (since 27 January 2006).

The disputed domain name was registered on 5 October 2022. The landing page of the disputed domain name automatically forwards to the domain <steemployees.com>. The website available at <steemployees.com> displays a message "THIS WEBSITE IS NOT ASSOCIATED WITH NOR ENDORSED BY ARCELOR MITTAL" and mentions statements and questions about the Complainant.

### COMPLAINANT'S CONTENTIONS:

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's Trademark (i.e., the disputed domain name includes the Complainant's Trademark in its entirety, combined with the generic term "employees").

The Complainant contends that the Respondent does not have any rights or legitimate interest in the disputed domain name.

The Complainant asserts that the Respondent is not related to the Complainant in any way. No license or authorization has been granted to the Respondent to use the Complainant's Trademark, or register the disputed domain name.

The disputed domain name resolves to the domain <steemployees.com>. The website available via this domain name displays content criticizing certain policies to which the Complainant complies.

The Complainant argues that free speech protection does not extend to the creation of rights or legitimate interests with respect to the domain name itself. The Complainant emphasizes that the Respondent has no right to impersonate the Complainant by incorporating the Complainant's trademark in the disputed domain name without the inclusion of other indicia (in the domain name) to make it clear that the domain name is unconnected to the Complainant.

The Complainant contends that the Respondent has registered numerous other domain names comprising third-party trademarks (amounting to a pattern of conduct). It appears that numerous other domain names comprising registered trademarks and the term "employees" have been registered between June and August 2022, and resolve to the Respondent's parking page at <clearertechnology.com>.

The Complainant emphasizes that the Respondent also registered the domain name <arcelormittalemployees.com>, which also comprises the Complainant's Trademark (the Panel notes that this domain name has, in the meantime, been transferred to the Complainant; following CAC domain name decision CAC-UDRP-104815 <arcelormittalemployees.com> of 26 August 2022).

The Complainant argues that the Respondent hides its identity behind a privacy proxy service and does not identify itself via the WHOIS information nor via the content on the landing page.

The Complainant asserts that the Respondent is not known as the disputed domain name.

The Complainant claims that the disputed domain name is being used to divert consumers or tarnish the Complainant's Trademark.

1. The disputed domain name has been registered and is being used in bad faith.

The Complainant contends that the Complainant's Trademark is widely known. Given the distinctiveness of the Complainant's Trademark, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's Trademark.

The Respondent uses the disputed domain name for a website that criticises the Complainant and/or its policies. However, the website displays no information identifying the owner as to avoid confusion with the Complainant. The website to which the disputed domain name redirects is identified only by the domain name itself <steemployees.com>.

The Complainant contends that the Respondent has created "template websites" in order to target various trademarks owners.

The Complainant asserts that the Respondent registered and uses the disputed domain name in bad faith to create confusion with the Complainant and the Complainant's Trademark. The Complainant asserts that the Respondent attempts to pass off as the Complainant in order to disrupt the Complainant's business.

### RESPONDENT'S CONTENTIONS:

1. The Respondent contends that the disputed domain name resolves to the domain <steemployees.com>. The website available via this domain lists: "THIS WEBSITE IS NOT ASSOCIATED WITH NOR ENDORSED BY ARCELOR MITTAL". This website thus disclaims any association with or endorsement by the Complainant. Furthermore, the Respondent claims that this website does not look like the Complainant's own website (i.e., the website available via the Complainant's domain <AreclorMittal.com>).

The Respondent contends that its landing page (i.e., the website available via <steemployees.com>) provides information to the Complainant's shareholders and employees, criticizing the Complainant. The Respondent asserts that it is evident to a viewer that his website is not sponsored by the Complainant. The Respondent concludes that the disputed domain name is not confusingly similar to the Complainant's Trademark.

1. The Respondent claims that he uses and registered the disputed domain name for legitimate purposes, i.e., for critiquing corporate social activism by the Complainant, and not as a pretext for commercial gain.

The Respondent asserts that he intends to use the disputed domain name for the purpose of educating shareholders, employees, and the general public of the Complainant's policies, particularly regarding "Environmental, Social and Governance issues" ("ESG"). The educational information is followed by a series of questions and an option to "contact us" if the user would like follow-up contact regarding their personal experiences and their rights.

The Respondent invokes the domain name decision regarding the domain name <leidosemployees.com> (Forum decision No. FA2207002005102 <leidosemployees.com> of 8 September 2022 (Leidos, Inc. v. Gabriel Joseph / Clearer Technology)), where he was involved as a respondent and where the Panelist decided to deny the request for transfer of the domain name.

1. As regards the bad faith claim, the Respondent argues as follows: The Respondent is an individual who has incorporated and does business as "Clearer Technologies", to provide criticism of companies who are strongly associated with the so called "ESG" movement and push "ESG" policies which Respondent believes violate employees' rights and is bad economic policy. The Respondent argues that he uses a pseudonym connected to the domain name <steemployees.com> to protect himself.

The Respondent asserts that he intends to use the disputed domain name to educate shareholders, employees and the public of the Complainants' policies and to offer information regarding their rights. The Respondent argues that he attempts to draw attention to the Complainant's social activism on controversial topics.

The Respondent further argues that he does not intend to attract users with the Complainant's Trademark, but merely uses the Complainant's Trademark to identify the subject of the criticism and commentary in which his website provides.

The Respondent denies that he intends to impersonate the Complainant or create the impression of being connected with the Complainant. The Respondent argues that his use of a forwarding site further distances the page from the Complainant's Trademark.

Further, the Respondent claims that he does not financially benefit from web traffic to the disputed domain name.

According to the Complainant, none of the other websites of the Respondent are commercial in nature, and none of these websites are offered for sale. The Respondent asserts that each of these domain names are for companies with known "ESG" policies which have garnered the attention of investors' publications. The Respondent argues that, while this shows a pattern, it is a pattern of exercising free speech to criticize the "ESG" activism of the companies and is supported by references.

The Respondent emphasizes that there is no evidence that he registered the disputed domain name for the purpose of selling or transferring it to the Complainant. The Respondent confirms that he has no such intention. The Respondent refers to Forum decision No. FA2207002005102 <leidosemployees.com> of 8 September 2022 (Leidos, Inc. v. Gabriel Joseph / Clearer Technology), where he was involved as a respondent and where the Panelist denied the request for transfer of the domain name.

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#### 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).

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#### 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).

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#### 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

##### **Confusing similarity**

The disputed domain name consists of the Complainant's Trademark "ARCELORMITTAL" with the addition of the word "SHAREHOLDERS".

The Panel notes that the disputed domain name incorporates the entirety of the Complainant's Trademark, with the addition of the word "SHAREHOLDERS" and the gTLD ".COM".

The Panel remarks that Section 1.7 of WIPO Overview 3.0 states that "in cases where a domain name contains the whole of a trademark, or where at least one dominant feature of the relevant trademark is recognisable in the domain name, the domain name shall normally be considered confusingly similar to that trademark for the purposes of UDRP status".

Section 1.8 of WIPO Overview 3.0 states: "Where the relevant mark is recognisable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) would not preclude a finding of confusing similarity under the first element".

The Panel is of the opinion that the addition of the descriptive word "SHAREHOLDERS" does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy.

In addition, the gTLD ".COM" may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

The likelihood of confusion is not eliminated by the fact that the landing page of the website to which the disputed domain name resolves indicates that the website is not associated with nor endorsed by the Complainant. The Panel is of the opinion that the content of a website is not relevant to determine whether or not the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights under paragraph 4(a)(i) of the Policy (see also Section 1.15 of WIPO Overview 3.0).

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the

Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

### **Rights or legitimate interests**

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the Panel then must weigh all the evidence, with the burden of proof always remaining on the Complainant.

### **The Complainant argues that:**

- The Respondent is not related in any way to the Complainant. The Respondent does not carry out any activity for, nor has any business with the Complainant;
  
- The Complainant has not granted a license or an authorization to the Respondent to make use of the Complainant's Trademark or apply for registration of the disputed domain name;
  
- The Respondent has registered multiple domain names comprising of a third-party trademark and the term "EMPLOYEES" between June and August 2022, which resolve to the Respondent's parking page [www.clearertechnology.com](http://www.clearertechnology.com). The Respondent also registered the domain name [arcelormittalemployees.com](http://arcelormittalemployees.com);
  
- The Respondent asserts that several elements refute a possible allegation that the domain name is used for free speech purposes:
  - The Respondent hides its identity behind a proxy and never identifies itself in the website. The Respondent is not known by the disputed domain name (with reference to the WHOIS information);
  - The Respondent has registered numerous domain names comprising third-party trademarks for the same purpose. A prior decision (Forum decision FA2207002002927 <bankofamericaemployees.com> and <boaemployees.com> of 16 August 2022 (Bank of America Corporation v. Clearer Technology / Gabriel Joseph)) confirms that the Respondent is known in a pattern of such conduct, which is not a legitimate interest;
  
- The Complainant states that, although the intended content of the website may enjoy protection, the Respondent does not have the right to impersonate the Complainant by incorporating its trademark in the disputed domain name, without making it clear that the domain name is unconnected to the Complainant;
  
- The Complainant claims that the disputed domain name is being used to divert consumers or tarnish the Complainant's Trademark.

### **The Respondent argues that:**

- The Respondent uses the disputed domain name for a legitimate noncommercial or fair use, without intend for commercial use. The Respondent argues that it uses the disputed domain name for free speech and to criticise the Complainant;
  
- The Respondent argues that its right to free speech (as provided for in the first amendment of the US Constitution and in article 10 of the European Convention of Human Rights) should be protected with regard to the disputed domain name;

- More precisely, the Respondent argues that it uses the disputed domain name for the purpose of educating shareholders, employees and the general public of the policies of the Complainant, in particular policies on “Environmental, Social and Governance” issues.
- The Respondent argues that it uses the Complainant’s Trademark to properly identify the Complainant as the subject of the criticism or commentary;
- The Respondent asserts that its use of the disputed domain name for criticism purposes is truthful and well-founded (referring to several links).

The Panel took note of these arguments and weighed them as explained below, together with additional information as explained below:

The Panel notes that Section 2.6 of WIPO Overview 3.0 states:

“2.6.1 To support fair use under UDRP paragraph 4(c)(iii), the respondent’s criticism must be genuine and noncommercial; in a number of UDRP decisions where a respondent argues that its domain name is being used for free speech purposes the panel has found this to be primarily a pretext for cybersquatting, commercial activity, or tarnishment.” (own emphasis)

“2.6.2 Panels find that even a general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (i.e., <trademark.tld> (including typos)); even where such a domain name is used in relation to genuine noncommercial free speech, panels tend to find that this creates an impermissible risk of user confusion through impersonation. In certain cases involving parties exclusively from the United States, some panels applying US First Amendment principles have found that even a domain name identical to a trademark used for a bona fide noncommercial criticism site may support a legitimate interest.” (own emphasis)

“2.6.3 Where the domain name is not identical to the complainant’s trademark, but it comprises the mark plus a derogatory term (e.g., <trademarksucks.tld>), panels tend to find that the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is prima facie noncommercial, genuinely fair, and not misleading or false. Some panels have found in such cases that a limited degree of incidental commercial activity may be permissible in certain circumstances (e.g., as “fundraising” to offset registration or hosting costs associated with the domain name and website).” (own emphasis).

The Panel took note of the fact that the Respondent was involved in various other domain name disputes, where the facts and arguments were similar (at least up to a certain degree).

The outcome of these previous decisions was as follows:

- Transfer denied:
  - Forum decision No. FA2207002005102 <leidosemployees.com> of 8 September 2022 (Leidos, Inc. v. Gabriel Joseph / Clearer Technology);
  - Wipo decision No. D2022-3136 <corningemployees.com> and <corningshareholders.com> of 28 November 2022 (Corning Incorporated v. Gabriel Joseph, Clearer Technology).
- Transfer accepted:
  - - CAC decision No. CAC-UDRP-104652 <com> and <boehringeringelheimemployees.com> of 22 July 2022 (Boehringer Ingelheim Pharma GmbH & Co.KG v. Clearer Technology);
  - - Forum decision No. FA2207002002927<bankofamericaemployees.com> and <boaemployees.com> of 16 August 2022 (Bank of America Corporation v. Clearer Technology / Gabriel Joseph);
  - CAC decision No. CAC-UDRP-104815 <arcelormittalemployees.com> of 22 October 2022 (ArcelorMittal v. Clearer Technology);
  - Wipo decision No. D2022-3013 <chemours.com> of 31 October 2022 (The Chemours Company LLC v. Whols Agent, Domain Protection Services, Inc. / Gabriel Joseph, Clearer Technology).

The Complainant referred in its Complaint to Forum decision No. FA2207002002927 <bankofamericaemployees.com> and

<boaemployees.com> of 16 August 2022 (Bank of America Corporation v. Clearer Technology / Gabriel Joseph).

The Respondent referred in his Response to Forum decision No. FA2207002005102 <leidosemployees.com> of 8 September 2022 (Leidos, Inc. v. Gabriel Joseph / Clearer Technology).

The parties did not refer to the other domain name decisions. As a general remark, the Panel considers that it has general powers (as articulated in paragraphs 10 and 12 of the UDRP Rules), including the power to undertake factual research into publicly available domain name decisions.

There is no evidence that the Respondent is or has been commonly known, by the disputed domain name or by the term "ARCELORMITTAL". The WHOIS information does not provide any information that might indicate any rights to use the term "ARCELORMITTAL" by the Respondent. The Respondent does not claim that it is known by the disputed domain name or by the term "ARCELORMITTAL". The Respondent does not dispute the fact that he is not affiliated with nor authorised or licensed by the Complainant in any way. The Respondent does not dispute that he does not carry out any activity for, nor has any business with, the Complainant. These elements of fact suffice to find prima facie that the Respondent has no rights or legitimate interests in the disputed domain name.

The Panel indeed finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The burden of proof has shifted to the Respondent to prove that he has rights or legitimate interests in the disputed domain name.

UDRP Panels have ruled in the past that the addition of words impersonating or suggesting sponsorship or endorsement by the trademark owner does not constitute a so-called "fair use".

In the current case, the disputed domain name consists of the Complainant's Trademark (in full) with the addition of the word "SHAREHOLDERS". This addition is not an addition of a critical term such as "critic," "sucks" or "cancer." In fact, the addition of the word "SHAREHOLDERS" carries, contrary to what the Respondent argues, a risk of an implied affiliation with the Complainant. It creates the impression towards users that the disputed domain name (and the website available via this domain) provides information about the Complainant's shareholders, or that the website is run by the Complainant or the Complainant's shareholders. At the very least, the use of the entire Complainant's Trademark and the term "SHAREHOLDERS" in the disputed domain name suggests an affiliation with the Complainant and thus causes confusion among the public.

The Respondent does not have the right to impersonate the Complainant by incorporating the Complainant's Trademark in its entirety in the disputed domain name without including other indicia (such as a derogatory term or another term indicating distance) to make it clear that the domain name is unconnected to the Complainant. The so called "criticism" purpose is not made apparent by the disputed domain name itself.

It might well be that the website to which the disputed domain name currently resolves (<steeleemployees.com>), displays a message denying affiliation with or endorsement by the Complainant, but, at least in the given circumstances, this is simply not enough.

The fact that the Respondent uses a privacy shield and fails to provide any information about his identity on the landing page does not help the case of the Respondent. The Respondent claims that he uses the name "Clearer Technology" as a pseudonym "to protect himself", without clarifying against/from whom or what. The website at the domain <clearer technology.com> is under construction and merely states: "Clearer Technology is always developing new systems, sites and technologies to handle today's opportunities". The Respondent does not contest that he operates this website. This creates the impression that "Clearer Technology" focuses on developing technologies, rather than on providing criticism on social or corporate policies.

Also, the content on the Respondent's landing page seems to focus on employees rather than on shareholders. The Respondent's website at <steeleemployees.com> specifically mentions: "This website is intended to address Arcelor Mittal employees who may not be aware of their employer's policies." This only adds to the confusion and raises the question of why the Respondent registered and uses a domain name consisting of the Complainant's Trademark and the term "SHAREHOLDERS". From the facts submitted by the Complainant and the Respondent, it does not seem that the Respondent is a shareholder of the Complainant or is an interest group representing shareholders of the Complainant.

As a general remark, while it might be true that the content of the Respondent's website at the domain <steemployees.com> enjoys protection under principles of freedom of speech/expression (the Panel does not make a statement on this), such protection does not automatically create rights or legitimate interests in the domain name itself consisting of the Complainant's Trademark and the word "SHAREHOLDERS".

This Panel is of the opinion that, in the specific circumstances of the case at hand, the Respondent's asserted criticism purpose is not convincing and does not entitle the Respondent to register or use a domain name that includes the Complainant's Trademark in full with the mere addition of the descriptive word "SHAREHOLDERS".

The Panel is not convinced that the Respondent's use is a genuine form of criticism. It does not seem that the allegations on the Respondent's website are sufficiently substantiated. This is a relevant factor since the Respondent is using the Complainant's Trademark in full in the disputed domain name, without addition of a term in the domain name that distances the Respondent from the Complainant. This is all the more relevant when considering that the Respondent registered and uses on quite a large-scale various domain names incorporating registered trademarks of third parties. The Respondent does not contest this and in fact seems to confirm this (the Respondent calls it "a pattern of exercising free speech to criticize the ESG activism of the companies"). In light of this large-scale use of third-party registered trademarks in domain names, it is surprising that the Respondent's criticism is limited to redirecting these domain names to a small number of landing pages, which contain only very general statements and questions about the corporate entities targeted. In the case at hand, the landing page at <steemployees.com> contains a limited list of allegations, without adequate source referencing or argumentation. The Respondent claims that he criticises the so called "ESG" policies or "Environmental, Social and Governance" policies of the Complainant, but fails to even explain what these policies are or where they can be found.

In sum, there does not seem to be a correct balance between the Respondent's wide-scale pattern of registering/using third party trademarks in domain names on the one hand and his asserted free speech purposes on the other hand.

Furthermore, although the use of the domain name is not openly commercial, it seems that the Respondent is using the disputed domain name to achieve goals that go further than mere "criticism". The Panel refers specifically to the following statements on the Respondent's website <steemployees.com>:

"For employees in the United States, are you potentially interested in forming a union at Arcelor Mittal?" (own emphasis)

"If you answer "yes" to any of these questions, please click the "Contact Us" link below to tell us about yourself, where you work, what you have experienced or seen, and to let us know how we may follow-up with you regarding these rights." (own emphasis)

In other words, it seems that the Respondent intends to convince employees of the Complainant to form a workers' union. This is not merely providing "criticism" of the Complainant.

Also, the Respondent is clearly trying to obtain information and data (including personal data) from internet users visiting his website. This is confirmed by the Privacy Policy on the Respondent's website at <steemployees.com>, where the following statements are found:

"We collect two types of data: Personal Data and Non-Personal Data." (own emphasis)

"We will only collect Personal Data when it is provided through any forms, applications, surveys, or any other means in which data is collected through the Services. Personal Data includes, but is not limited to, name, email address, phone number, social security number, and physical address." (own emphasis)

As such, the Respondent uses the disputed domain name to obtain an advantage that goes further than mere "criticism" of the Complainant and its policies.

Even though the Respondent claims not to benefit commercially from the disputed domain name, the website <steemployees.com> to which the domain name resolves, mentions the following about advertisements:

In the Terms of Use: "The Website may contain links to other sites or resources provided by third parties. These links are provided for your convenience only. This includes links contained in advertisements, including banner advertisements and sponsored links. We have no control over the contents of those sites or resources, and accept no responsibility for said contents." (own emphasis)

In the Privacy Policy: "Our site may contain content from third parties from time to time, such as advertisements that may use third-party cookies." (own emphasis)

There is at least a risk that the website will be used for commercial purposes, rather than for genuine noncommercial criticism. Also, the Panel notes that in some of the other domain name disputes where the Respondent was involved and where he invoked free speech arguments, the landing pages did in fact contain pay-per-click advertisements. This was the case in the decisions CAC decision No. CAC-UDRP-104652 <boehringeremployees.com> and <boehringeringelheimemployees.com> of 22 July 2022 (Boehringer Ingelheim Pharma GmbH & Co.KG v. Clearer Technology); and Forum decision No. FA2207002002927 <bankofamericaemployees.com> and <boaemployees.com> of 16 August 2022 (Bank of America Corporation v. Clearer Technology / Gabriel Joseph).

Finally, at least some of the so called "criticism" on the Respondent's landing page at <steemployees> seems to tarnish the Complainant or the Complainant's trademark (including but not limited to the statement: "Arcelor Mittal positions are leading to people literally starving in their homes").

For all of the reasons mentioned above, the Panel concludes that the Complainant has made a prima facie case showing that the Respondent lacks rights or legitimate interests in respect of the disputed domain name, and that this was not sufficiently rebutted by the Respondent. The Panel therefore finds that the Complainant has established the second element of the Policy in accordance with paragraph 4(a)(ii).

### **Bad faith**

#### **The Complainant argues that:**

The Respondent registered and uses the domain name in bad faith to create confusion with the Complainant's Trademark by attempting to pass off as the Complainant in order to disrupt the Complainant's business. More in particular:

- The Respondent has registered the domain name with full knowledge of the Complainant's Trademarks, given the distinctiveness and reputation of the Complainant's Trademark;
- The disputed domain name links to the website <steemployees.com>, a website that criticises the Complainant. The website does not display any information identifying its owner in order to avoid the likelihood of confusion with the Complainant;
- The Respondent has created "template websites" to target several trademark holders (amounting to a pattern of bad faith conduct);
- The Respondent uses the disputed domain name to trick internet users intending to visit the Complainant's website into visiting the Respondent's website.

#### **The Respondent argues that:**

- The Respondent uses a pseudonym to protect himself whilst criticising companies such as the Complainant. The Respondent's anonymous criticism does not indicate bad faith. The Respondent argues that private individuals have the right to not have certain information revealed under privacy protection legislation.

- The Respondent wants to educate shareholders, employees and the public of Complainant's policies and offer information regarding their rights. The Respondent does not intend to attract users with the Complainant's Trademark, but merely to identify the subject of his criticism.
- The Respondent is attempting to draw attention to the Complainant's alleged ESG policies.
- The Respondent is not financially benefiting from any web trafficking to the disputed domain name and the website <stelemployees.com>.
- The Respondent has other domain names similar in format and criticism. None of the websites are commercial in nature. It shows a pattern of free speech to criticize the ESG activism of the companies and supported by references.
- The Respondent does not intend to impersonate the Complainant or create the impression of being connected with the Complainant.
- The Complainant has not shown any evidence that the Respondent registered the disputed domain name for the purpose of selling or transferring the registration to the Complainant.

The Panel is of the opinion that the Respondent was clearly aware of the Complainant and the Complainant's Trademark, when registering and using the disputed domain name.

Given the fact that the disputed domain name contains the Complainant's Trademark in full, with the sole addition of the descriptive word "SHAREHOLDERS" and without any term indicating criticism of the Complainant, the disputed domain name risks impersonating the Complainant or at least suggests affiliation with or endorsement by the Complainant. The fact that the Respondent uses a privacy service to hide his identity and does not provide any transparency about his identity on his website, exacerbates the risk of confusion among users.

Notwithstanding the Respondent's use of a disclaimer on the website <stelemployees.com>, the use, in the disputed domain name, of the Complainant's Trademark in full, together with the descriptive word "SHAREHOLDERS", means that the Respondent is effectively impersonating the Complainant. This is all the more objectionable given the fact that the Respondent's own website contains the following provisions (in the Terms of Use) (own emphasise):

"You agree not to use the Website (...) to impersonate or attempt to impersonate the Company, a Company employee, another user or any other person or entity (including, without limitation, by using e-mail addresses or screen names associated with any of the foregoing)."

"User Contributions must not: (...) Infringe any patent, trademark, trade secret, copyright or other intellectual property or other rights of any other person; (...); Impersonate any person, or misrepresent your identity or affiliation with any person or organization."

In other words, the Respondent is not unaware of the risk of impersonification and unauthorised use of trademarks. It is reasonable to expect from the Respondent that he applies the same principles to his own actions.

The so called "criticism" on the website seems a mere pretext for other purposes, or is at least insufficiently elaborated to justify use of the Complainant's Trademark in the disputed domain name. The Respondent claims to criticise the Complainant's "Environmental, Social and Governance" ("ESG") policies, but does not provide any information or evidence about these policies on his website. This can hardly be considered as a genuine form of criticism, let alone a form of criticism that would allow unauthorized use of a protected trademark. It seems rather that the Respondent tries to unfairly take advantage of the Complainant's Trademark for purposes that go further than merely providing criticism. These purposes seem to include forming a workers' union, collecting personal data from internet users, and (potentially) offering advertisements and other services to internet users. The Respondent's large-scale use of third-party trademarks in domain names is clearly not in proportion to the actual "criticism" on the Respondent's website(s).

For all the reasons mentioned above, the Panel concludes that the Respondent registered and uses the disputed domain name in bad faith to create confusion with the Complainant's Trademark in order to obtain personal advantages, in order to disrupt the Complainant's business or in order to trick internet users intending to visit the Complainant's website into visiting the Respondent's website. The Panel concludes that the Respondent's conduct constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy.

Accepted

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

1. **arcelormittalshareholders.com**: Transferred
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## PANELLISTS

Name	<b>Bart Van Besien</b>
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DATE OF PANEL DECISION **2022-12-08**

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Publish the Decision

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