

Decision for dispute CAC-UDRP-104999

Case number CAC-UDRP-104999

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Domain names arceloimrttal.com

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization ARCELORMITTAL (SA)

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name sumeyye yuksel

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 multinational steel manufacturing corporation formed in 2006, headquartered in Luxemburg. It is the world's leading steel and mining company. It is specialized in steel producing in a worldwide scale.

The Complainant is the owner of the International Trademark ARCELORMITTAL, Reg. No. 947686, registered on August 3, 2007.

FACTUAL BACKGROUND

The Complainant is the largest steel producing company in the world and is the market leader in steel for use in automotive, construction, household appliances and packaging with 69.1 million tonnes crude steel made in 2021. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant is one of the world's leading integrated steel and mining companies. The Complainant is the largest producer in Europe and among the largest in the Americas, second largest in Africa and the sixth largest producer in the Commonwealth of Independent States (CSI) region and has a smaller but growing presence in Asia.

The Complainant has steel-making operations in 16 countries on four continents, including 37 integrated and mini-mill steel-making facilities. As of December 31, 2021, the Complainant had approximately 158,000 employees.

The Complainant also owns an important domain names portfolio, such as the domain name <arcelormittal.com> registered since January 27, 2006.

According to the evidence, the disputed domain name <arceloimrttal.com> was registered on **November 14, 2022** and resolves to an inactive website.

PARTIES CONTENTIONS

Complainant Contentions:

- The Complainant asserts that the disputed domain name <arceloimrttal.com> is confusingly similar to its trademark ARCELORMITTAL and its domain names associated, as it includes the Complainant's trademark in its entirety, based on Respondent's typosquatting practice.
- The Complainant asserts that the obvious misspelling of the trademark ARCELORMITTAL, i.e. the reversal of the letters "R" and "I", is characteristic of a Typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. Previous panels have found that the slight spelling variations does not prevent a domain name from being confusingly similar to the Complainant's trademark.
- The Complainant asserts that the Respondent is not known as the disputed domain name.
- The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <arceloimrttal.com> and he is not related in any way with the Complainant; that the Complainant does not carry out any activity for, nor has any business with the Respondent. Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ARCELORMITTAL, or apply for registration of the disputed domain name by the Complainant.
- The Complainant contends that Respondent did not make any use of disputed domain name since its registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name, which it demonstrates a lack of legitimate interests in respect of the disputed domain name.
- The Complainant's trademark ARCELORMITTAL is widely known. Past panels have confirmed the notoriety of the trademark ARCELORMITTAL in the following cases: ARCELORMITTAL v. China Capital, CAC-UDRP 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.") and ARCELORMITTAL v. Robert Rudd, CAC-UDRP Case No. 101667, ("The Panel is convinced that the Trademark is highly distinctive and well-established.").
- The Complainant states that the misspelling of the trademark ARCELORMITTAL was intentionally designed to be confusingly similar with the Complainant's trademark. Besides, the disputed domain name resolves to an index 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 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. As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use, e.g.: Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and CBS Broadcasting, Inc. v. Dennis Toeppen, WIPO Case No. D2000-0400.
- The Complainant asserts that MX servers are configured which suggests that the disputed domain name may be actively used for email purposes, e.g.: JCDECAUX SA v. Handi Hariyono, CAC-UDRP 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.").

Response

The Respondent did not reply to any of the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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

In accordance with Paragraph 4(a) of the Policy, the onus is on the Complainant to prove:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will consider each of these requirements in turn.

1. Identical or Confusingly Similar

The Complainant's Trademark ARCELORMITTAL despite the intentional alteration of the letter "R" and "I" is recognizable in the disputed domain name. Such alteration constitutes an act of typosquatting, that generates a false impression inside the mind of the Internet consumer (see WIPO Overview 3.0 point 1.9; Arcelormittal, S.A. vs. Henry Williams, CAC-UDRP Case No. 104845; Arcelormittal, S.A. vs. Bestinrnarknet, CAC-UDRP Case No. 104090; Arcelormittal, S.A. vs. ArcelorMittal Construction Ilc, CAC-UDRP Case No. 104949 and Arcelormittal, S.A. vs. Godwin, CAC-UDRP Case No. 104912).

In relation to the gTLD ".com", it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark (see Arcelormittal, S.A. vs. Bestinrnarknet, CAC-UDRP Case No. 104090).

Therefore, the disputed domain name <arceloimrttal.com> is confusingly similar to Complainant's ARCELORMITTAL Trademark.

2. Rights or Legitimate Interests

According to the submitted evidence, and based on Respondent's Default, this Panel is convinced that the Complainant has established its prima facie case in relation to the Second Element of the Policy, due to:

- (1) the Respondent chose on purpose a well-known trademark as ARCELORMITTAL, intentionally misspelling it, confusing the users who seeks or expects to find the Complainant on the Internet;
- (2) the Respondent registered the disputed domain name on **November 14, 2022**, very well after the Complainant's acquired its trademark rights over the word ARCELORMITTAL on **August 3, 2007**;
- (3) the Respondent is not associated, or affiliated with the Complainant;
- (4) the Complainant has not granted any rights to the Respondent to use the ARCELORMITTAL trademark, whether a license to offer any product or service, or any rights to apply for registration of the disputed domain name by the Complainant; and
- (5) there is no evidence that the Respondent has become commonly known by the term "arceloimrttal.com".

Therefore, this Panel finds that the Complainant has successfully made a prima facie case, which was not rebutted in any manner by the Respondent and concludes that the Respondent have no rights or legitimate interests in respect of the disputed domain name.

3. Registered and Used in Bad Faith

Registration in Bad Faith:

The Complainant was founded in 2006, and acquired its Trademark Rights over the word ARCELORMITALL at least since 2007. According to the evidence submitted before this Panel, the Complainant is a well-known Trademark with intense commercial activity, including on the Internet (ARCELORMITTAL v. China Capital, CAC-UDRP Case No. 101908; ARCELORMITTAL v. Robert Rudd,

According to point 3.1.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”):

“Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

Panels have moreover 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: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent’s commercial benefit, even if unsuccessful, (iii) the lack of a respondent’s own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant’s (or a competitor’s) website, and (vi) absence of any conceivable good faith use.(...)” (emphasis added).”

Point 3.2.2 of the WIPO Jurisprudential Overview 3.0, related to the assessment of respondent’s knowledge (“Knew or should have known”), has established that:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark. (...)” (emphasis added).

In the present dispute, to this Panel, the Respondent had (more than) sufficient time to learn about Complainant’s reputation and ARCELORMITTAL Trademark’s value, to the point of choosing it and intentionally altering its characters at the time of the domain name’s registration.

Bad Faith Use:

In the present dispute, the disputed domain name has remained inactive. In relation to the Passive Holding Doctrine, point 3.3 of the WIPO Jurisprudential Overview 3.0 states that:

“(…) While panelists 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 addition:

“(…) The very act of having acquired [the domain name] raises the probability of Respondent using [it] in a manner that is contrary to Complainant’s legal rights and legitimate interests. [...] To argue that Complainant should have to wait for some future use of the disputed domain names to occur in order to demonstrate Respondent’s bad faith use is to render intellectual property law into an instrument of abuse by the Respondent. The result would be the likelihood of the accumulation and use of disputed domain names for the implicit, if not explicit, purpose of misappropriating or otherwise unlawfully undermining Complainant’s goodwill and business. The fact that this misappropriation may occur in any as yet undetermined manner at an uncertain future date does not negate Respondent’s bad faith. On the contrary, it raises the specter of continuing bad faith abuse by Respondent of Complainant’s Mark, name and related rights and legitimate business interests” (see *Comerica Inc. v. Horoshiy, Inc.*, WIPO Case No. D2004-0615). (emphasis added).

Furthermore, and as the Complainant asserts and proves, the fact that the disputed domain name might be active for potential email activity, increases the risks of imminent severe online infringements and/or frauds on detriment of the Complainant’s reputation and ARCELORMITTAL Trademark’s value.

Therefore, this Panel concludes that, the disputed domain name has been registered and is being used in faith as well.

Accepted

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

1. **arceloimrttal.com**: Transferred
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PANELLISTS

Name	María Alejandra López García
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DATE OF PANEL DECISION **2022-12-23**

Publish the Decision
