

Decision for dispute CAC-UDRP-105034

Case number **CAC-UDRP-105034**

Time of filing **2022-12-01 09:31:34**

Domain names **arcelormittcl.com**

Case administrator

Organization **Iveta Špiclová (Czech Arbitration Court) (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 the owner of International Trademark Registration No. 947686 for “ArcelorMittal”, registered on August 3, 2007.

FACTUAL BACKGROUND

The Complainant, ARCELORMITTAL S.A., is one of the largest steel-producing companies worldwide for use in automotive, construction, household appliances and packaging. The Complainant holds sizeable supplies of raw materials and operates extensive distribution networks.

The Complainant states that it owns the domain name <arcelormittal.com>, registered on January 27, 2006.

The disputed domain name was registered on November 24, 2022 and resolved to an index page.

PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred

to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to the ARCELORMITTAL mark on the basis that the disputed domain name consists of its ARCELORMITTAL in its entirety with an obvious misspelling and that the generic top-level domain name suffix ("gTLD") ".com" are insufficient to avoid the finding that the disputed domain name is confusingly similar to the Complainant's mark.

The Complainant also argues that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Respondent has not acquired any rights in a trademark or trade name corresponding to the disputed domain name. In addition, the Respondent is not affiliated with the Complainant nor did the Complainant license or authorize the Respondent to use the ARCELORMITTAL mark.

The Complainant further asserts that the disputed domain name has been registered and is being used in bad faith as the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a false impression with regard to a potential affiliation or connection with the Complainant without permission from the Complainant. The Complainant states that the Respondent is thereby using the disputed domain name to intentionally attract, for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website.

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

1. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns trademark registration of the ARCELORMITTAL mark.

The differences between the disputed domain name and the Complainant's ARCELORMITTAL trademark are the misspelling of the ARCELORMITTAL mark by substituting the letter "A" with the letter "C" and the gTLD ".com" which in the Panel's view does not avoid confusing similarity with the Complainant's trademark.

It is well established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (WIPO Overview 3.0, section 1.9). The disputed domain name consists of obvious and intentional misspelling of the Complainant's ARCELORMITTAL mark and is considered confusingly similar.

It is further established that the gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. (See WIPO Overview 3.0, section 1.11). The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.*, WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L'Oréal v. Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v. Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.*, WIPO Case No. D2009-0877).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the ARCELORMITTAL mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

2. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect of the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated *prima facie* that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the ARCELORMITTAL mark (see *OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2015-1149; *Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735). The Complainant also submitted evidence that its registration and use of the trademark predate the registration of the disputed domain name by over fifteen years.

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain name.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name which is sufficient to rebut the Complainant's *prima facie* case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

3. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant submitted evidence that the disputed domain name resolved to an index page and states that the Respondent has not demonstrated any activity in respect of the disputed domain name. The disputed domain name is being passively held by the Respondent as it resolves to an inactive website. UDRP panelists 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 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. (See WIPO Overview 3.0, Section 3.3).

The Complainant also submitted evidence of MX server records that the disputed domain name may be used for e-mail purposes. It is well established that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending e-mail, phishing, identity theft, or malware distribution. In some such cases, the respondent may host a copycat version of the complainant's website. Many such cases involve the respondent's use of the domain name to send deceptive e-mails, e.g., to obtain sensitive or confidential personal information from prospective job applicants, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers. (See WIPO Overview 3.0, Section 3.4). Under the particular circumstances of the present case, it is inconceivable that the Respondent made or contemplated making any good faith use of the disputed domain name as part of an e-mail address.

Having regard to the above factors in the particular circumstances of the present case whereby the Complainant's ARCELORMITTAL mark is sufficiently distinctive, the Respondent has failed to submit a Response and the fact that the Respondent did not appear to have made any actual or contemplate good-faith use of the disputed domain name, it is implausible to put any good faith use to the disputed domain name.

In this case, the evidence shows that the Complainant's mark is distinctive and has attained significant reputation. The strong reputation and distinctive character of the Complainant's mark is evidence that the Respondent is unlikely to have registered the disputed domain name without sight and knowledge of the Complainant's mark and it is implausible that there is any good faith use to which the disputed domain name may be put to. It is also the Complainant's evidence that the Respondent could not have registered the disputed domain name without prior knowledge of the Complainant's mark as the Respondent's name has no connection with the Complainant's ARCELORMITTAL mark which was registered long ago. This is another indicator of bad faith on the part of the Respondent (see *Boursorama SA v. Estrade Nicolas*, WIPO Case No. D2017-1463).

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain name and the Complainant's ARCELORMITTAL mark, the fact that no conceivable good faith use can be put to the disputed domain name and the fact that no Response was submitted by the Respondent, the Panel draws the inference 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. **arcelormittcl.com**: Transferred

PANELLISTS

Name	Jonathan Agmon
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DATE OF PANEL DECISION 2023-01-05

Publish the Decision