

Decision for dispute CAC-UDRP-105077

Case number	CAC-UDRP-105077
Time of filing	2022-12-23 11:22:08
Domain names	interviews-arcelormittal.com, recruit-arcelormittal.com, recruits-arcelormittal.com

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

Organization	Machotech
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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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the international trademark n° 947686 ARCELORMITTAL® registered on August 3, 2007.

The Complainant also owns <arcelormittal.com> registered since January 27, 2006.

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 disputed domain names were registered on December 13 or 14, 2022 and resolve to pages without any substantial content, although MX servers are configured.

PARTIES CONTENTIONS

Complainant:

A. The disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant contends that the disputed domain names are confusingly similar to the trademark ARCELORMITTAL®. Indeed, the domain names include it in its entirety.

The addition of the generic term “Interviews”, “Recruit” or “Recruits” in one of the disputed domain names is not sufficient to escape the finding that that domain names are confusingly similar to the Complainant's trademark ARCELORMITTAL®. It does not change the overall impression of a connection to the Complainant's trademark ARCELORMITTAL®. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and the domain name associated. It is well established that “a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP”. (WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin).

Furthermore, the addition of the gTLD “.COM” does not change the overall impression of a connection to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain names and the Complainant, its trademark and its domain names associated. WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. (“It is also well established that the specific top level of a domain name such as “.com”, “.org” or “.net” does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.”).

B. The Respondent has no rights or legitimate interests in respect of the disputed domain names

The Respondent is not commonly known by the disputed domain names. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain names. Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <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 contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names and he is not related in any way with the Complainant. 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 names by the Complainant.

Furthermore, the disputed domain names resolve to pages without any substantial content. The Complainant contends that Respondent did not make any use of the disputed domain names since registration, and this confirms that the Respondent has no demonstrable plan to use them. It demonstrates a lack of legitimate interests in respect of the disputed domain names. WIPO Case No. D2000-1164, Boeing Co. v. Bressi (“the Respondent has advanced no basis on which he could conclude that it has a right or legitimate interest in the domain names”).

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain names.

C. The disputed domain names were registered and are being used in bad faith

The Complainant's trademark ARCELORMITTAL® is widely known. Past panels have confirmed the notoriety of the trademark ARCELORMITTAL® in the following cases:

- 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.”).

Thus, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain names with full knowledge of the Complainant's trademark. WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell (“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.”).

Respondent has not demonstrated any activity in respect of the disputed domain names, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain names 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.

- WIPO Case No. D2000-0003, *Telstra Corporation Limited v. Nuclear Marshmallows*;
- WIPO Case No. D2000-0400, *CBS Broadcasting, Inc. v. Dennis Toeppen*.

Finally, MX servers are configured which suggests that the disputed domain names may be actively used for email purposes. CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono ("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.").

On those facts, the Complainant contends that Respondent has registered the disputed domain names and is using them in bad faith.

RESPONDENT

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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

Confusingly Similar

The disputed domain names consist of the Complainant's ARCELOR MITTAL mark (which is registered as an international trade mark for steelmaking since 2007), the generic term 'interviews', 'recruit' or 'recruits', a hyphen and the gTLD .com.

Previous panels have found confusing similarity when a respondent merely adds a generic term to a Complainant's mark. See PG&E Corp. v Anderson, D2000-1264 (WIPO November 22, 2000)(finding that respondent does not by adding common descriptive or generic terms create new or different marks nor does it alter the underlying mark held by the Complainant). The addition of the generic terms 'interviews', 'recruit' or 'recruits' does not prevent confusing similarity between the disputed domain names and the Complainant's mark.

A gTLD does not serve to distinguish a domain name from a Complainant's mark. See Red Hat Inc v Haecke FA 726010 (Nat Arb Forum July 24, 2006) (concluding that the <redhat.org> domain name is identical to the complainant's red hat mark because the mere addition of the gTLD was insufficient to differentiate the disputed domain name from the mark). The Panel holds that the addition of the gTLD .com does not prevent confusing similarity between the Complainant's mark and the disputed domain names.

Accordingly, the Panel holds that the disputed domain names are each confusingly similar to the Complainant's registered mark.

As such the Panel holds that Paragraph 4 (a) (i) of the Policy has been satisfied.

Rights or Legitimate Interests

The Respondent is not authorised by the Complainant and does not appear to be commonly known by the disputed domain names. See

Alaska Air Group, Inc. and its subsidiary, Alaska Airlines v. Song Bin, FA1408001574905 (Forum September 17, 2014) (holding that the respondent was not commonly known by the disputed domain name as demonstrated by the WHOIS information and based on the fact that the complainant had not licensed or authorized the respondent to use its ALASKA AIRLINES mark).

Directing a domain name containing a mark with a reputation to a blank page has been held not to be a bona fide offering of goods or services or a legitimate non commercial or fair use. See Wahl Clipper Corporation v. Theresa W Chavez, FA2111001973154 (Forum December 14, 2021) (“Complainant argues that Respondent fails to make a bona fide offering of goods or services or legitimate non commercial or fair use. Instead, the disputed domain names merely resolve to inactive websites displaying the message “Stop!” When Respondent is not using a disputed domain name in connection with an active website, the Panel may find that Respondent is not using the disputed domain name for a bona fide offering of goods or services. [...] Respondent thus appears to have not made demonstrable preparations to use the disputed domain names since their registration. Therefore, the Panel finds that Respondent failed to make a bona fide offering of goods or services or legitimate non commercial or fair use per Policy 4(c)(i) or (iii).”). The disputed domain names have been printed to a page saying forbidden which is not a bona fide offering of goods or services or a legitimate or non commercial fair use in the context that they contain a well known trade mark.

The Respondent has not answered this Complaint and has not rebutted the prima facie case evidenced by the Complainant as set out herein.

As such the Panel finds that the Respondent does not have rights or a legitimate interest in the disputed domain names and that the Complainant has satisfied the second limb of the Policy.

Registration and Use in Bad Faith

The disputed domain names, all containing the Complainant’s mark which has a reputation for steelmaking, are being passively held without any explanation causing disruption to the Complainant’s business. ARCELOR MITTAL is distinctive and not a descriptive term.

The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from or exploit the trade mark of another. Passive holding of a domain name containing a mark with a reputation can be bad faith registration and use. See Telstra Corporation Limited v Nuclear Marshmallows, D2000-0003 (WIPO Feb. 18, 2000) cited inWahl Clipper Corporation v. Theresa W Chavez FA2111001973154 (Forum December 14, 2021) (where the Panel held that in case of the use of a domain name containing a complainant’s mark with a reputation which had been used for a blank page without further explanation that this was unjustified disruption of a complainant’s business where respondent provided no evidence whatsoever of any actual or contemplated good faith.)

As such, the Panel holds that the Complainant has made out its case that the disputed domain names were registered and used in bad faith and has satisfied the third limb of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **interviews-arcelormittal.com**: Transferred
- 2. **recruit-arcelormittal.com**: Transferred
- 3. **recruits-arcelormittal.com**: Transferred

PANELLISTS

Name	Dawn Osborne
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DATE OF PANEL DECISION 2023-01-17

Publish the Decision