

Decision for dispute CAC-UDRP-105080

Case number	CAC-UDRP-105080
Time of filing	2022-12-23 11:21:41
Domain names	zenicaarcelormittal.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	oMedia doo
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OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <zenicaarcelormittal.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- International trade mark registration no. 947686, registered on 3 August 2007, for the word mark ARCELORMITTAL, in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 of the Nice Classification.

(Hereinafter, 'the Complainant's trade mark'; 'the Complainant's trade mark ARCELORMITTAL'; or 'the trade mark ARCELORMITTAL' interchangeably).

At the time of writing of this decision, the disputed domain name resolves to a parked page featuring pay-per-click (PPC) advertisement for goods and services related to the Complainant's business segment ('the Respondent's website').

FACTUAL BACKGROUND

The Complainant's statements of fact can be summarised as follows:

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.

In addition to the trade mark mentioned in the section 'Identification of Rights', the Complainant also owns numerous domain names, including <arcelormittal.com>, which was registered on 27 January 2006.

PARTIES CONTENTIONS

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to trade marks in which the Complainant has rights

The Complainant avers that the disputed domain name is confusingly similar to the Complainant's trade mark ARCELORMITTAL, in so far as the disputed domain name incorporates the Complainant's trade mark in its entirety. The addition of the geographical term 'Zenica' is insufficient to escape the finding that the disputed domain name is confusingly similar to the Complainant's trade mark ARCELORMITTAL. On the contrary, the geographical term 'Zenica' worsens the likelihood of confusion as it directly refers to the Complainant's subsidiary ArcelorMittal Zenica. Furthermore, the generic Top-Level Domain (gTLD) suffix (<.com>) is typically disregarded in the assessment of identity or confusingly similar under paragraph 4(a) of the UDRP Policy.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant's trade mark, or to apply for registration of the disputed domain name on the Complainant's behalf.

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

Lastly, the Complainant states that the disputed domain name resolves to a parked page comprising PPC commercial links, and that such use of the disputed domain name is neither bona fide nor legitimate non-commercial or fair use.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant contends that the trade mark ARCELORMITTAL is well-known and distinctive, and that its notoriety has been acknowledged in prior UDRP decisions, namely: CAC Case No. 101908, ARCELORMITTAL v China Capital; and CAC Case No. 101667, ARCELORMITTAL v Robert Rudd.

The Complainant further contends that (i) the term 'Zenica' in the disputed domain name string cannot be coincidental to the extent that it directly refers to the Complainant's subsidiary ArcelorMittal Zenica; and (ii) given the distinctiveness and reputation of the trade mark ARCELORMITTAL, it is inconceivable that the Respondent could have registered the disputed domain name without actual knowledge of the Complainant's trade mark ARCELORMITTAL.

Use

The Complainant avers that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP Policy).

PROCEDURAL FACTORS

Disputed domain name – standing

The Panel notes that, according to the Registrar's verification response, the disputed domain name expired on 15 December 2022. Nonetheless, the Registrar has confirmed that the disputed domain name '[...]' has been placed under a lock status as to prevent any transfers or changes to the registration information during the proceedings...'.

The Panel is therefore 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

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

- i. The disputed domain name is identical or confusingly similar to a trade mark 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.

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'ARCELORMITTAL' since 2007.

The disputed domain name <zenicaarcelormittal.com> was registered on 15 December 2021, and it is composed of the joint terms 'Zenica' and 'Arcelormittal'.

The Complainant's trade mark ARCELORMITTAL is wholly incorporated into the disputed domain name. The contiguous geographical term 'Zenica' in the disputed domain name string may well evoke the city of Zenica in Bosnia and Herzegovina, which is the place of business of the Complainant's subsidiary ArcelorMittal Zenica. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that

effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. On the contrary, the presence of PPC links on the Respondent's website is a testament to the Respondent's lack of bona fide use of the disputed domain name under paragraph 4 (c) of the UDRP Policy.

The Respondent has failed to refute the Complainant's prima facie case that it has met its burden under the second UDRP Policy ground.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant's trade mark has been registered since 2007;
- The Complainant has a subsidiary in Zenica, Bosnia and Herzegovina (ArcelorMittal Zenica), which is the country where the Respondent appears to be domiciled;
- The Complainant operates its activities through the domain name <arcelormittal.com>, which was registered in 2006;
- The disputed domain name <zenicaarcelormittal.com> was registered in 2021;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name;
- UDRP panels have consistently held that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0')), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business; and
- The Respondent's default in this UDRP proceeding.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

'(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.'

As mentioned in the above section 'Identification of Rights', the disputed domain name resolves to a parked page featuring PPC advertisement for goods and services related to the Complainant's business segment.

In order to determine this Policy ground, the Panel takes stock of paragraph 3.1.4 of the WIPO Jurisprudential Overview 3.0, according to which panels have found various types of evidence to support a presumption of bad faith under the above circumstances. The most compelling factors in the present matter are: (i) the actual confusion between the Complainant's trade mark ARCELOMITTAL and the disputed domain name; (ii) the Respondent's attempt to cause such confusion; (iii) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; and (vi) the absence of any conceivable good faith use of the disputed domain name, particularly in view of the Respondent's website hosting PPC commercial links related to the Complainant's business area.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **zenicaarcelormittal.com**: Transferred
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PANELLISTS

Name	Gustavo Moser
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DATE OF PANEL DECISION	2023-01-23
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Publish the Decision	
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