

Decision for dispute CAC-UDRP-105095

Case number	CAC-UDRP-105095
Time of filing	2023-01-20 09:06:44
Domain names	arcelormittal-american.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

Name	Anonymous Anonymous
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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 is the owner of the international trademark n° 947686 ARCELORMITTAL® registered on August 3rd, 2007.

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

FACTUAL BACKGROUND

The Complainant is a company specialized in steel producing in the world.

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 name <arcelormittal-american.com> was registered on January 12th, 2023 and resolves to an inactive page. Besides, MX servers are configured.

COMPLAINANT:

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant contends that the disputed domain name <arcelormittal-american.com> is confusingly similar to the trademark ARCELORMITTAL®.

The Complainant asserts that the addition of the term "AMERICAN" is not sufficient to escape the finding that the domain name is confusingly similar to the trademark and branded goods ARCELORMITTAL®. It does not change the overall impression of the designation as being connected to the Complainant's trademark ARCELORMITTAL®. It does not prevent the likelihood of confusion between the disputed domain name 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. Vasilij Terkin).

Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name 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 domain name

According to WIPO Case No. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd., 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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. 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. For instance 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 domain name <arcelormittal-american.com> 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 name by the Complainant.

The disputed domain name resolves to an inactive page. The Complainant contends that Respondent did not use the disputed domain name, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. For instance Forum Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants ("The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy ¶¶ 4(c)(i) and (iii).")

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name <arcelormittal-american.com>.

C. The domain name was registered and is being used in bad faith

The Complainant contends that the disputed domain name <arcelormittal-american.com> is confusingly similar to its distinctive trademark ARCELORMITTAL®.

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.");

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.");

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 domain name with full knowledge of the Complainant's trademark.

The disputed domain name resolves to an inactive 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.

MX servers are configured which suggests that the disputed domain name may be actively used for email purposes. See 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 name <arcelormittal-american.com> and is using it in bad faith.

RESPONDENT:

Respondent did not file any response in this proceeding.

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).

This is a case of adding a generic, geographical term - in casu "american" - to a somewhat well-known trademark and in respect of the well-established practice that the specific top level of a domain name such as ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use his trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark ARCELORMITTAL and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. The Panel, therefore, finds that the disputed domain name was registered in bad faith.

The disputed domain name does not currently resolve to an active website. In this case the Complainant has however evidenced that the disputed domain name enables the Respondent to send emails using an e-mail address that contains the disputed domain name.

It is inconceivable that the Respondent can use the e-mails connected to the disputed domain name for good faith use of the disputed domain name as part of an e-mail address. The Panel notes in this connection that passive holding of a domain name does not prevent a finding of bad faith use under 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. The three essential issues under the paragraph 4(a) of the Policy are whether:

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

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered. There is no present use of the disputed domain name but there is evidence that the disputed domain name is likely used as part of e-mail addresses for fraudulent purposes. It is concluded that the Respondent makes bad faith use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. arcelormittal-american.com: Transferred

PANELLISTS

Name	Lars Karnoe
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DATE OF PANEL DECISION 2023-02-13

Publish the Decision
