

Decision for dispute CAC-UDRP-105158

Case number	CAC-UDRP-105158
Time of filing	2023-01-26 12:05:54
Domain names	arcelormittallimited.online

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	still thick
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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 registration No. 947686 for the trademark ARCELORMITTAL, registered on 3 August 2007 for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

The Complainant is also the owner of numerous domain names comprising the trademark ARCELORMITTAL, including the domain name <arcelormittal.com>, registered on 27 January 2006.

FACTUAL BACKGROUND

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

The disputed domain name was registered on 23 January 2023 and resolves to an inactive webpage. In addition, there is evidence that MX servers were configured.

PARTIES CONTENTIONS

The Complainant contends that the disputed domain name is confusingly similar to the trademark ARCELORMITTAL as it includes it entirely. The addition of the term "limited" to the Complainant's mark in the disputed domain name cannot prevent a finding of confusing similarity as it is a term connected to the Complainant.

The Complainant further contends that the Respondent lacks rights or legitimate interests in the disputed domain name. In particular, the Respondent is not identified in the Whois database as the disputed domain name and is not related in any way to the Complainant. The Respondent does not carry out any activity for, nor has any business with, the Respondent. The Complainant did not authorise the Respondent to make use of its trademark in the disputed domain name, and the Respondent is not a Complainant's licensee. As the disputed domain name does not resolve to an active webpage, the Complainant maintains that the Respondent is not using the disputed domain name and that there are no demonstrable plans to make use of it.

According to the Complainant, the Respondent registered and is using the disputed domain name in bad faith. The Complainant's trademark is widely known and enjoys substantial reputation. In light of this, the Complainant states that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark. In addition, given the reputation of the Complainant's trademark, it is not possible to conceive any plausible actual or contemplated active use of the disputed domain name that would be legitimate. The incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use. Finally, MX servers are configured, which suggests that the dispute domain name may be actively used for e-mail purposes.

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

I. The disputed domain name is confusingly similar to the Complainant's ARCELORMITTAL trademark

The Panel finds that the Complainant has successfully proved that it owns registered rights over the trademark ARCELORMITTAL that well predate the date of registration of the disputed domain name. The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark. The disputed domain name incorporates the Complainant's trademark entirely, followed by the term "limited". The mere incorporation of an identical trademark in a domain name, when such trademark is clearly identifiable within the domain name, gives rise to a confusing similarity. The addition of the word "limited" cannot prevent a finding of confusing similarity as the ARCELORMITTAL trademark remains clearly recognizable within the disputed domain name despite the addition of this word.

Thus, the Panel is satisfied that the first condition under the Policy is met.

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

As also confirmed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), a 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 burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy.

Based on the available evidence, the Respondent does not appear to be known by the disputed domain name. The Respondent is not a licensee of, nor has any kind of relationship with, the Complainant. The Complainant never authorised the Respondent to make use of its trademark in the disputed domain name. The disputed domain name does not resolve to an active website but this circumstance cannot affect the Respondent's lack of rights or legitimate interests. The Respondent registered a domain name that fully incorporates the Complainant's ARCELORMITTAL trademark. In light of the high distinctive character of the Complainant's mark and the generic character of the term "limited", the Panel finds that the mere registration of the disputed domain name carries a high risk of implied affiliation with, or endorsement by, the Complainant. A consumer looking for the Complainant on the Internet, could consider that the disputed domain name resolves to a website associated with the Complainant and thus would be misled as to the origin of, or endorsement by, the Complainant of the disputed domain name. Furthermore, there is evidence of the fact that MX records were configured for the disputed domain name. Accordingly, there is a high risk that the Respondent uses the disputed domain name to send fraudulent emails to third parties. As such, the Respondent is not using, or making demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services, and is not making a legitimate, noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers, or to tarnish the Complainant's mark.

The Panel is therefore satisfied that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

In light of the above, the Panel finds that also the second condition of the Policy is met.

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

To succeed under the Policy, a complainant must show that a domain name has been both registered and is being used in bad faith.

In relation to registration in bad faith, the Panel finds that the trademark ARCELORMITTAL enjoys substantial reputation and is uniquely associated with the Complainant. The fact that the Respondent has registered a domain name incorporating this trademark and in association with a misleading generic term cannot amount to a mere coincidence. Rather, it is the Panel's belief that when the Respondent registered the disputed domain name, it had precisely in mind the Complainant and its well-known trademark. The reputation of the ARCELORMITTAL trademark and its strict connection to the Complainant induces the Panel to believe that its incorporation in the disputed domain name by an unaffiliated entity can create by itself a presumption of bad faith (see section 3.1.4 of the WIPO Overview 3.0).

Although the disputed domain name has only been passively held, such non-use cannot prevent a finding of bad faith under the passive holding doctrine ((see section 3.3 of the WIPO Overview 3.0). In particular, in the instant case, the Panel notes the following factors that are relevant to assess bad faith:

- (i) the disputed domain name incorporates a highly distinctive trademark, uniquely associated to the Complainant, with the addition of a generic term that could induce Internet users looking for the Complainant to erroneously believe that the disputed domain name originates from the Complainant, or is endorsed by the Complainant;
- (ii) the Respondent failed to file a Response in this UDRP dispute;
- (iii) the Respondent provided false contact details when it registered the disputed domain name: according to the general powers conferred to the Panel by article 10 of the Rules, the Panel has checked the truthfulness of the contact details provided by the Respondent and it appears that the address provided does not exist;
- (iv) given the presence of the Complainant's reputed mark in the disputed domain name and the lack of any affiliation with the Complainant, any possible use of the disputed domain name by the Respondent cannot be legitimate and in good faith;
- (v) the Respondent has set up MX records for the disputed domain name, which indicates a potential risk of fraud or other illegitimate activity, which is further evidence of bad faith.

In light of the above, the Panel concludes that the Complainant has successfully proved that the disputed domain name has been registered and is being used in bad faith. Therefore, the third and last condition under the Policy is met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arcelormittallimited.online**: Transferred

PANELLISTS

Name	Angelica Lodigiani
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DATE OF PANEL DECISION	2023-03-06
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Publish the Decision	
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