

Decision for dispute CAC-UDRP-105356

Case number CAC-UDRP-105356

Time of filing 2023-04-14 08:46:43

Domain names arceloimittal.cam

Case administrator

Organization Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization ARCELORMITTAL

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name Patricia Walsh

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 evidence shows that the Complainant is the owner of the international trademark n° 947686 ARCELORMITTAL® registered by it on August 3, 2007 via WIPO.

FACTUAL BACKGROUND

The Complainant is a Luxembourg company that is the largest steel producing company in the world. It is the owner of the international trademark n° 947686 ARCELORMITTAL® registered by it on August 3, 2007 via WIPO.

The Complainant also owns numerous domain names including <arcelormittal.com> which it has had registered since January 27, 2006 and which it uses in its business.

The disputed domain name <arceloimittal.cam> was registered by the Respondent on April 6, 2023 and it is used so as to resolve to a parking page with commercial links of suppliers in competition with the Complainant.

It has come to the notice of the Complainant that the disputed domain name has been registered by the Respondent with a slight change to the spelling of the trademark, showing the potential for confusing internet users who would naturally assume that the domain name is an official domain name of the Complainant and that it would lead to an official website, neither of which is correct.

The Complainant is also concerned that the domain name resolves to a website carrying commercial links. This conduct by the Respondent is obviously inimical to the interests of the Complainant and will do damage to its trademark and wider commercial activities. The Complainant therefore brings this proceeding to have the domain name transferred to itself.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant made the following contentions.

The Complainant is a Luxembourg company that is the largest steel producing company in the world.

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

The Complainant also owns an important domain names portfolio, such as the domain name <arcelormittal.com> which it has had registered since January 27, 2006 and which it uses in its business.

The disputed domain name <arceloimittal.cam> was registered by the Respondent on April 6, 2023 and it is used so as to resolve to a parking page with commercial links.

The Complainant therefore brings this Complaint and will establish the following contentions.

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

The disputed domain name <arceloimittal.cam> is confusingly similar to the Complainant's trademark ARCELORMITTAL®.

The obvious misspelling of the Complainant's trademark ARCELORMITTAL® (i.e. the substitution of the letter "R" by the letter "I") is characteristic of the practice of typosquatting which is intended to create confusing similarity between the Complainant's trademark and the disputed domain name. It is well established that spelling variations do not prevent a domain name from being confusingly similar to the Complainant's trademark but enhance it.

Moreover, the addition of the New generic Top-Level Domain suffix ".cam" does not change the overall impression of the designation as being connected to the trademark ARCELORMITTAL® of the Complainant. Nor does it prevent the likelihood of confusion between the domain name and the relevant trademark.

Consequently, the disputed domain name <arceloimittal.cam> is confusingly similar to Complainant's trademark ARCELORMITTAL®.

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

The Complainant is first required to make out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

That is so because the Respondent is not commonly known by the domain name as the Whois database shows that the registrant's name is not similar to the disputed domain name.

Moreover, the Respondent has no rights or legitimate interests in respect of the domain name <arceloimittal.cam> as it is not related in any way with the Complainant and the Complainant does not carry out any activity for, nor does it have 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 to register the disputed domain name.

The disputed domain name is also a typosquatted version of the Complainant's ARCELORMITTAL® trademark.

The disputed domain name also resolves to a parking page with commercial links showing that the Respondent has no right to register the domain name and is not using it for a legitimate non-commercial or fair use.

Thus, the Respondent has no right or legitimate interest in the disputed domain name <arceloimittal.cam>.

3. **The disputed domain name was registered and is being used in bad faith**

The disputed domain name <arceloimittal.cam> was registered and has been used in bad faith because it is confusingly similar to the ARCELORMITTAL® trademark

The trademark is also a famous mark and the Respondent must have known of it and of the Complainant when it registered the domain name. Accordingly, it must be inferred that the Respondent registered the domain name with full knowledge of the Complainant's trademark and therefore in bad faith.

Moreover, the misspelling of the trademark ARCELORMITTAL® was clearly intentional and designed to be confusingly similar to the trademark.

The disputed domain name also resolves to a parking page with commercial links. The Respondent has thus attempted to attract Internet users to its own webpage for commercial gain by using the Complainant's trademarks, which is evidence of bad faith.

Finally, MX servers are configured which suggests that the disputed domain name may be actively used for e-mail purposes.

Consequently, the Complainant contends that the Respondent has registered and used the disputed domain name <arceloimittal.cam> in bad faith.

RESPONDENT

The Respondent did not file a 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).

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

DISCUSSION AND FINDINGS

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the CAC Supplemental Rules.

A. Administrative compliance

By notification dated April 14, 2023 and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complainant did not provide the name of the Respondent (domain-name holder) and all information (including any postal and e-mail addresses and telephone and fax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the CAC to send the Complaint as described in Paragraph 2(a) [Rules, Paragraph 3(b)(v)]. The notification invited the Complainant to have regard to the Registrar's verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder. At a later hour on April 14, 2023, the

Complainant filed an Amended Complaint and the CAC determined also on April 14, 2023, that the Complaint should be admitted to proceed further in the Administrative Proceeding.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B. Substantive matters

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. In that regard, the Panel also notes that the onus is on the complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name. The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

- (i) The 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 in respect of the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

Identical or Confusingly Similar

The Complainant has adduced evidence that the Panel accepts, that the Complainant is the registered owner of the internationally registered trademark being trademark n°947686 for ARCELORMITTAL® ("the ARCELORMITTAL trademark") that it registered via WIPO on August 3, 2007.

It will be seen therefore that the trademark was registered well before the disputed domain name was registered, which was on April 6, 2023 and which is used to redirect internet users to a webpage that carries information that could well be seen by internet users to relate to goods and services offered by the Complainant. The Complainant has verified that the Respondent is the registrant of the disputed domain name.

The Panel next finds that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark for the following reasons.

First, the domain name includes the entirety of the ARCELORMITTAL trademark, albeit with an alteration to the spelling of the word ARCELORMITTAL. Accordingly, it is clear that the domain name has been inspired by and is an attempt to copy the trademark. It is also clear and has been held many times in prior UDRP decisions that when internet users see an entire trademark used in a domain name in this way, so that the spelling of the trademark has been altered, they naturally conclude that the domain name is an official domain name of the trademark owner. The Panel's view is that internet users who see the domain name in the present case would naturally conclude that it was an assertion that it related to the Complainant itself and/or that it was authorised by the Complainant, none of which is true. Internet users would also conclude that the domain name was owned by a person or entity that was entitled to say that it could speak on behalf of the Complainant and could use the Complainant's name and trademark, which is also not true.

Secondly, not only is the alteration to the spelling of the trademark comparatively minor, so that the clearly intended impression of the domain name remains, but in addition to that, the domain name resolves to a website with commercial links for goods and services that would be taken to refer to the Complainant's own goods and services. The Panel has in mind the products described in the exhibit to the Complaint as "Fonderie Aluminium" and "Usage Metaux". The Panel has also checked the way the links resolve on the internet when the domain name is activated, i.e., as it currently operates. This reveals a series of links for Online Sheet Metal Fabrication which lead to links to sheet metal manufacturers and "Machinery Parts" and "Steel Sheet Company", which leads to "steel sheet company", "Stainless Steel", "Steel Sheet" and "Stainless Steel Sheet Metal". The evidence is that the Complainant manufactures steel products. This can only enhance the conclusion that the domain name would be taken to be the domain name of the Complainant which is well known for producing the same products specified on the internet under the guise of the disputed domain name. Hence, the domain name would be taken to be confusingly similar to the trademark.

Thirdly, the ".dot.cam" suffix, a New gTLD, which is present in the domain name, is disregarded for the purposes of assessing confusing similarity, as it could not negate the clear impression that the domain name is confusingly similar to the trademark.

The Panel therefore finds that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark and that this conclusion is supported by and consistent with the prior UDRP decisions cited by the Complainant.

The Complainant has thus made out the first of the three elements that it must establish.

Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and that when such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name.

That prima facie case is made out from the following considerations.

- (a) The Complainant has clearly established its rights in the ARCELORMITTAL mark.
- (b) The evidence of the Complainant is that the Respondent is not related in any way to the Complainant's business, is not affiliated with the Complainant or authorized by it in any way to use the ARCELORMITTAL trademark and does not carry out any activity for, nor has any business with, the Complainant.
- (c) The evidence shows that the Respondent is not commonly known by the domain name under paragraph 4(c)(ii) of the Policy.
- (d) The evidence is that no licence nor authorisation has been granted by the Complainant to the Respondent to make any use of the trademark or to register the disputed domain name.
- (e) The disputed domain name resolves to a website that advertises producers that produce goods which are the same as the goods produced by the Complainant. Thus, it can be assumed that the Respondent registered it for a bad motive such as to try to sell it or to use it to make money by pretending that it is the Complainant or a provider of links to entities that make and sell goods that are made and sold by the Complainant and who must therefore be competitors of the Complainant. In that regard, the Panel has examined the contentious website as noted above and finds that it clearly purports either to be the website of the Complainant itself or a website that promotes the goods of competitors of the Complainant. This is deceptive as it is untrue and misleading and it therefore shows that the Respondent has no right to the domain name and no legitimate interest in it.
- (f) None of this conduct is bona fide or legitimate and none of it comes within any of the criteria for a right or legitimate interest in a domain name that are set out in paragraph 4(c) (i) – (iii) of the Policy. Nor is there any evidence to show that the Respondent could in any other way show a right or legitimate interest in the domain name.

These facts give rise to the prima facie case made out by the Complainant.

The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default. Accordingly, the prima facie case has not been rebutted and the Complainant has made out the second of the three elements that it must establish.

Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive.

The four specified circumstances are:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's 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 site or location.

There is no need to repeat all of the details set out already, but the conduct of the Respondent described above in registering and using the domain name clearly amounts to bad faith registration and its conduct since the registration by retaining it and putting the Complainant at the risk of its being used to its detriment and in breach of its trademark, clearly amount to bad faith use. Thus, bad faith registration and use of the domain name have been established.

That is so for the following reasons.

First, the Respondent must have been aware of the existence of the Complainant and its prominent reputation when it registered the disputed domain name, because the Respondent chose the domain name itself and then made an alteration to the spelling of the Complainant's famous trademark which nevertheless still gave the impression that it was the Complainant's trademark that was being invoked. Thus, the Respondent had actual knowledge of the Complainant and its famous trademark which has long been held to be a ground for finding bad faith registration and, by retaining the domain name and using it in the way described above, bad faith use. The Panel therefore finds that it is highly likely that the Respondent chose the trademark, made the alteration, registered the domain name and used it in the manner described above deliberately to invoke the existence and activities of the Complainant for an improper purpose and therefore in bad faith.

Secondly, the conduct of the Respondent brings the case within the provisions of paragraph 4(b) (i) of the Policy, that being the most likely explanation for registering the domain name and for retaining it.

Thirdly, the same considerations bring the case within the provisions of paragraph 4(b) (iii) of the Policy.

Fourthly, the same conduct of the Respondent leads to the conclusion that the Respondent, in registering the domain name deceptively and without any authority to do so, must have intended to create a likelihood of confusion, with the intention of attracting current and potential customers of the Complainant looking for its services and doing so in this misleading manner. Thus, the matter comes within the provisions of paragraph 4(b) (iv) of the Policy.

Fifthly, there is no conceivable ground for concluding that the Respondent was acting in good faith, as the Respondent was clearly targeting the Complainant for its, the Respondent's, own financial interest.

Finally, in addition and having regard to the totality of the evidence, the Panel finds that, in view of Respondent's registration of the disputed domain name using the ARCELORMITTAL trademark, retaining it and using it in the manner described above, the Respondent registered and used it in bad faith within the generally accepted meaning of that expression.

As the Complainant rightly submits, such conduct of the Respondent has been held by many previous UDRP panels to constitute bad faith registration and use.

Accordingly, the Complainant has shown the third of the three elements that it must establish. It is therefore entitled to the relief that it claims.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arceloimittal.cam**: Transferred

PANELLISTS

Name	Neil Brown
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DATE OF PANEL DECISION **2023-05-11**

Publish the Decision
