

Decision for dispute CAC-UDRP-105328

Case number CAC-UDRP-105328

Time of filing 2023-04-04 10:09:40

Domain names arcelornnital.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization ARCELORMITTAL

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Organization newmeyemortgagecom

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 proprietor of the mark ARCELORMITTAL, registered under the Madrid international system (947686, 3 August 2007), in classes including 6 (steel and metals), 7 (tools and machines), and 40 (treatment of materials).

FACTUAL BACKGROUND

The Complainant, a company (société anonyme) with its seat in Luxembourg, is the largest steel producing company in the world. Its operations are in raw materials, manufacturing, and distribution, across multiple territories (e.g. manufacturing in 16 countries and customers in over 150 countries). It operates its own website at the domain name <arcelormittal.com>, registered since 2006.

The Respondent, an individual with an address in California, USA, registered the disputed domain name on 28 March, 2023.

PARTIES CONTENTIONS

No administratively complaint response has been filed. Neither written notice nor advice of delivery of the Complaint was returned

to the Provider, so it is not known whether the written notice was received by the Respondent or not. A number of email notices were sent, but neither proof of delivery or notification of undelivery has been received. The Respondent never accessed the online platform.

The Complainant submits that all aspects of the Policy have been addressed and that the disputed domain name should be transferred to it. It supports this request through legal arguments (which are referred to under the appropriate headings, below) and various forms of evidence properly set out in Annexes.

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).

Disregarding in accordance with established practice under the Policy the generic TLD .com, the Panel finds that the only differences between the mark in which the Complainant has rights and the disputed domain name are the use of the letters 'nn' in place of the letter 'm' and 't' in place of 'tt' in the string MITTAL (that is, NNITAL on one hand, and MITTAL on the other). The Complainant submits, and the Panel accepts, that this can be understood as an instance of 'typosquatting' (see further WIPO Jurisprudential Overview, version 3.0, para 1.9); the Panel further notes the Complainant's citation of a previous case under the Policy, concerning itself, where a similar situation arose concerning the domain name <arcelormltal.com> (WIPO Case No. D2020-3457, ArcelorMittal (SA) v. Name Redacted). As such, the disputed domain name is confusingly similar to the Complainant's mark.

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 has made out the required prima facie in respect of this aspect of the Policy. The Complainant has declared, without contradiction from the Respondent, that the Respondent is not related in any way with the Complainant, that the Complainant does not carry out any activity for, nor has any business with the Respondent, and that it has not granted any licence or authorisation to the Respondent to make any use of its mark or to apply for registration of a domain name. The Panel notes that the Respondent is known by a personal name (originally unavailable due to a privacy / proxy registration) which does not have any connection with the term 'ARCELORNNITAL'. Due to the Respondent's lack of participation in the present proceedings, and the use of the disputed domain name for a 'parking' page, there is no further basis on which the Panel can identify any plausible rights or legitimate interests.

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).

The Panel accepts the Complainant's submission that its mark is well known, and that the same has been held by other Panels (e.g. CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd). This is of particular relevance given the very close similarity between the disputed domain name and the Complainant's mark, and the likelihood that registration was on the basis of this similarity and in particular the visual similarities (or potential for typographical errors) between NNITAL and MITTAL.

In respect of the use of the disputed domain name, the Complainant argues that there is no plausible good faith use, in light of the matters mentioned above and the resolution of the disputed domain name to a parking or holding page. Reliance is also placed in this context on the 'Telstra' line of decisions (WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows). The Complainant also submits that the configuration of MX servers, in respect of the potential use of the disputed domain name in respect of email, is further evidence of the impossibility of good faith use. The Panel, taking account of the absence of any further evidence from the Respondent or available to it through the materials presented, accepts these submissions.

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

The reasons for the decision are as set out above. In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concluded that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark ARCELORMITTAL, and that the minor variation in how the component MITTAL appears in the disputed domain name (NNITAL) does not prevent a finding of confusing similarity with the Complainant's marks. It is likely, in light of the nature of the Complainant's mark and activities, and the degree to which the disputed domain name departs from the Complainant's mark (as a 'typo'), that the Respondent would have been aware of the Complainant and its particular activities, and that the Respondent is intentionally using the disputed domain name to attract Internet users to its online activities and/or is engaged in 'passive holding' within the terms of the Telstra doctrine. The Panel takes into account the evidence supplied by the Complainant, including the configuration of MX records, and the well-known nature of its mark. The Panel can find for these reasons that the disputed domain name was registered and is being operated in bad faith, and that the Respondent, through its failure to participate in these proceedings, has not pointed to any rights, legitimate interests, or the absence of bad faith registration or use. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arcelornnital.com**: Transferred

PANELLISTS

Name	Daithi Mac Sithigh
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DATE OF PANEL DECISION **2023-05-15**

Publish the Decision
