

Decision for dispute CAC-UDRP-105449

Case number **CAC-UDRP-105449**

Time of filing **2023-05-16 09:31:11**

Domain names **arcelormittal-inc.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **ARCELORMITTAL**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Name **Anonymous Anonymous**

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 owner of the international trademark "ARCELORMITTAL" no. 947686, registered since 3 August 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

It also owns multiple domain names, including <arcelormittal.com> which is registered since 27 January 2006 and resolves to the Complainant's official website.

Finally, the Complainant conducts its business under the company or trade name ARCELORMITTAL (Société Anonyme).

The Complainant's above-mentioned rights are hereinafter collectively referred to as the ARCELORMITTAL Trademark.

FACTUAL BACKGROUND

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 tons crude steel produced in 2021. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The disputed domain name was registered on 10 May 2023 by an unidentified registrant, residing in the UK.

The disputed domain name does not resolve to any active website. However, MX records have been set for the disputed domain name.

PARTIES CONTENTIONS

Complainant:

The Complainant contends that the disputed domain name is confusingly similar to its trademark, since it includes the entirety of the Complainant's registered and well-known ARCELORMITTAL Trademark. The mere addition of a generic and descriptive term "inc" (meaning "incorporated") does not prevent a finding of confusing similarity to the Complainant's trademark.

The Complainant contends that the Respondent has nothing to do with the Complainant, nor has been licensed or authorised to register or use the disputed domain name. The Respondent is neither identified in the Whois database as the disputed domain name, nor is commonly known by the disputed domain name or owns any corresponding registered trademarks.

Finally, the Complainant contends that, given the distinctiveness and reputation of the ARCELORMITTAL Trademark, it is unlikely that the Respondent had no knowledge of the Complainant's mark when he had registered the disputed domain name confusingly similar to such mark. Moreover, considered that MX servers are set for the disputed domain name, it is inconceivable that the Respondent makes any good faith use of the disputed domain name as part of an e-mail address.

The Complainant, therefore, requests the transfer of the disputed domain name.

Respondent:

No administratively compliant Response has been filed.

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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (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 by the Respondent in bad faith.

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in the ARCELORMITTAL Trademark since 2007.

In assessing identity or confusing similarity, the Panel finds that the disputed domain name is confusingly similar to the ARCELORMITTAL Trademark, because it incorporates the entirety of such mark and differs from it by merely adding a hyphen, the letters "inc", which is the common abbreviation of the generic and descriptive term "incorporation", and the TLD .com.

In UDRP cases where the relevant trademark is recognisable within the disputed domain name, panels agree that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see paragraph 1.8 of WIPO Overview 3.0).

UDRP panels also agree that the TLD is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark, as it is a technical requirement of the registration (see paragraph 1.11.1 of WIPO Overview 3.0).

Hence, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's mark.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that a complainant shall establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to that respondent (see paragraph 2.1 of WIPO Overview 3.0: "where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element").

The Complainant contends that it has no relationship with the Respondent whatsoever and has never authorised the Respondent to use the ARCELORMITTAL Trademark or to register the disputed domain name.

The disputed domain name was registered on 10 May 2023 by an unidentified registrant, residing in the UK. Therefore, no evidence is available to show that the Respondent has been commonly known by the disputed domain name or acquired any trademark or service mark rights in a name corresponding to the disputed domain name.

The Respondent registered the disputed domain name, incorporating the entirety of the Complainant's well-known trademark, and, thus confusingly similar to the ARCELORMITTAL Trademark.

UDRP panels have found that domain names identical or confusingly similar to a complainant's trademark carry a high risk of implied affiliation. A domain name consisting of a trademark plus an additional term at the second- or top-level is seen as tending to suggest sponsorship or endorsement by the trademark owner. Thus, UDRP panels have largely held that such composition cannot constitute fair use (see paragraph 2.5.1 of WIPO Overview 3.0).

Although the disputed domain name does not resolve to any active website, the Complainant has shown that the Respondent had configured e-mail server (MX) records for the disputed domain name. By connecting e-mail server to the disputed domain name and creating the false impression that it is the Complainant's server, it is implausible that there is any good faith use to which the disputed domain name may be put. Configuring e-mail on the disputed domain name that confuses people into thinking that it belongs to the Complainant is likely part of a fraudulent scheme (phishing), such as to obtain sensitive or confidential personal information, or to solicit payment of fraudulent invoices.

Therefore, the Panel is unconvinced that, before any notice of the dispute, the Respondent used or prepared 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 or is 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 ARCELORMITTAL Trademark.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate any rights or legitimate interests to the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that disputed domain name has been registered and is being used in bad faith for the following cumulative reasons.

The Respondent concealed his identity by using privacy or proxy service.

Panels agree that, although the use of privacy or proxy service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact a panel's assessment of bad faith (see paragraph 3.6 of WIPO Overview

3.0).

The Respondent registered the disputed domain name, incorporating in its entirety the dominant and distinctive element of the Complainant's prior mark (namely the wording ARCELORMITTAL). The addition of a hyphen, the generic and descriptive term "inc" (common abbreviation of the term "incorporation") and the TLD .com (a technical requirement of the registration) is insufficient to escape the finding of confusing similarity between the disputed domain name and the Complainant's mark.

Given the distinctiveness of the Complainant's prior mark, confirmed by several UDRP decisions (see CAC Case No. 101908, CAC Case No. 101667, WIPO Case No. DCO2018-0005), the Respondent's choice to add a generic and descriptive term to the ARCELORMITTAL Trademark could not have been for a mere chance without actual knowledge of the Complainant's rights in such mark and the intention to exploit its reputation by diverting traffic away from the Complainant's website.

Currently, the disputed domain name does not resolve to any active website.

UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see 3.3 WIPO Overview 3.0 and, in particular, Telstra Corporation Limited v. Nuclear Marshmallows WIPO Case No. D2000-0003).

The following factors were considered by the Panel when applying the passive holding doctrine in the present case:

- the degree of distinctiveness and/or reputation of the Complainant's trademark;
- the failure of the Respondent(s) to submit a response or to provide any evidence of actual or contemplated good faith use;
- the Respondent's concealing its identity (privacy or proxy service) or use of false contact details;
- the implausibility of any good faith use to which the disputed domain names may be put.

Taken into account all circumstances of this case, the Panel finds that it is not possible to conceive of any plausible actual or contemplated active use of the disputed 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 ARCELORMITTAL Trademark under trademark law.

Finally, MX records have been set for the disputed domain name, which suggests that it may be actively used for fraudulent e-mail purposes.

Therefore, the Panel finds that the Respondent, by registering and using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to his web site or other on-line location, by creating a likelihood of confusion with the ARCELORMITTAL Trademark as to the source, sponsorship, affiliation, or endorsement of his web site or location or of a product or service on his web site or location (paragraph 4(b)(iv) of the Policy).

The Complainant has discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

The disputed domain name is to 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. **arcelormittal-inc.com**: Transferred

PANELLISTS

Name	Ivett Paulovics
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DATE OF PANEL DECISION 2023-06-13

Publish the Decision
