

Decision for dispute CAC-UDRP-105453

Case number	CAC-UDRP-105453
-------------	-----------------

Time of filing	2023-05-25 11:37:36
----------------	---------------------

Domain names	mittalindustries.com
--------------	----------------------

Case administrator

Name	Olga Dvořáková (Case admin)
------	-----------------------------

Complainant

Organization	ARCELORMITTAL
--------------	---------------

Complainant representative

Organization	NAMESHIELD S.A.S.
--------------	-------------------

Respondent

Name	luo wen qiang
------	---------------

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

Arcelormittal (the “Complainant”) is the owner of the European Union trademark MITTAL, registered on December 1, 2005 (Reg. No. 003975786), Nice classes 6 and 40.

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 tonnes crude steel made in 2021. The Complainant is the owner of the European Union trademark MITTAL, registered on December 1, 2005 (Reg. No. 003975786), Nice classes 6 and 40.

The Complainant also owns domain names containing the trademark MITTAL, such as the domain name <mittalsteel.com> registered since January 3, 2003, <arcelormittal.com> registered since January 27, 2006, etc.

Previous UDRP panels have acknowledged that MITTAL trademark is well-known (eg. WIPO Case No. D2018-1086, ArcelorMittal S.A. v. Registrant of lakshmimittal.org, c/o WHOIstrustee.com Limited / Zeus Holding Market Ltd. (“The Domain Name wholly incorporates a well-known mark [MITTAL]”); WIPO Case No. D2010-2049, Arcelormittal v. Mesotek Software Solutions Pvt. Ltd. (“the Complainant’s marks MITTAL and MITTAL STEEL have been widely used and are well-known.”)).

The disputed domain name <mittalindustries.com> was registered on May 13, 2023, and resolves to a registrar parking page where it is offered for sale and MX servers are configured too.

PARTIES CONTENTIONS

The Complainant submits that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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 Complainant filed the Complaint in English rather than in Chinese (i.e. the language of the disputed domain name registration agreement). Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or otherwise specified in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. Paragraph 10(b) and (c) of the Rules requires the Panel to ensure that the proceeding takes place with due expedition and that the parties are treated fairly and given a fair opportunity to present their respective cases.

The Complainant filed its Complaint in English and then requested that English be the language of the proceeding.

The Complainant noted the following factors supporting English as the fair language of the proceeding: (a) the English language is the language most widely used in international relations and is one of the working languages of the Center; (b) the disputed domain name is formed by words in Roman characters (ASCII) and not in Chinese script; (c) the domain name includes not only the trademark "MITTAL", but also English term "industries"; (d) in order to proceed in Chinese, the Complainant would have had to retain specialized translation services and would, therefore, incur significant procedural costs; (e) the use of Chinese in this case would impose a burden on the Complainant which must be deemed significant in view of the low cost of these proceedings; (f) the Center informed the Respondent in Chinese and provided the Respondent with the opportunity to respond in Chinese.

The Panel agrees with the factors presented by the Complainant and also admits additional important factors in favour of the Complainant's option of English language for this proceeding: (a) the Respondent has been given the opportunity to present its case in this proceeding and to respond formally to the issue of the language of the proceeding; (b) the Respondent has not responded to the Complainant's request for a change of the language from Chinese to English.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to both parties and is not prejudicial to either one of the parties in his or her ability to articulate the arguments for this case.

The Panel has also taken into consideration the fact that insisting the Complaint and all supporting documents to be re-filed in Chinese would cause an unnecessary burden of cost to the Complainant and would unnecessarily delay the proceeding which would be contrary to Paragraph 10(b) and (c) of the Rules.

Having considered all the above matters, the Panel determines under paragraph 11(a) of the Rules that (i) it will accept the Complaint and all supporting materials as filed in English; and (ii) English will be the language of the proceeding and the decision will be rendered in English.

In view of all of the above, 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 Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's trademark MITTAL. The Complainant's trademark is included in the disputed domain name in its entirety. The addition of the term "industries" is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark. It does not change the overall impression of the designation as being connected to the Complainant's trademark.

The Panel acknowledges that the Complainant presented prima facie evidence that the Respondent is not sponsored by or affiliated with Complainant in any way. Furthermore, the Complainant has not licensed, authorized, or permitted Respondent to use Complainant's trademark in any manner, including in domain names. The Respondent's name does not resemble the disputed domain name in any manner. The Respondent's use of the disputed domain name does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use.

As no administratively compliant response has been provided to the Panel and the prima facie evidence was not challenged by the Respondent, the Panel concludes that the Respondent meant Complainant's trademark MITTAL when he/she registered the disputed domain name <mittalindustries.com> (see WIPO Overview 3.0, para. 3.1.1). Previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. Accordingly, the Panel finds that the disputed domain name was registered in bad faith.

The disputed domain name was offered for sale and the Respondent was not actively using the disputed domain name. It appeared that the Respondent has registered the disputed domain name only in order to sell it back for out-of-pockets costs, which evinces bad faith registration and use (para. 4(b)(i) of the Policy).

Finally, previous panels have also held that the use of a domain name for purposes other than to host a website may constitute bad faith, namely, sending e-mail, phishing, identity theft, or malware distribution (see WIPO Overview 3.0, para. 3.4). As the disputed domain name has been set up with MX records (which means that it may be actively used for e-mail purposes), the Panel is, therefore, convinced that the disputed domain name was also used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **mittalindustries.com**: Transferred

PANELLISTS

Name	Darius Sauliūnas
------	------------------

DATE OF PANEL DECISION 2023-06-27

Publish the Decision