

Decision for dispute CAC-UDRP-105607

Case number **CAC-UDRP-105607**

Time of filing **2023-07-10 10:37:29**

Domain names **mittalsteels.net**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **ARCELORMITTAL**

Complainant representative

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

Respondent

Name **Nikhil Diwan**

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns several trademarks including the wording “MITTAL” and “MITTAL STEEL” in several countries, such as:

The international trademark “MITTAL” no. 1198046 registered on December 5, 2013.

The European trademark “MITTAL STEEL” no. 4233301 registered since March 27, 2006.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant is a company specialized in steel producing.

The Complainant is one of 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 59 million tons crude steel made in 2022.

The Complainant also owns numerous domain names portfolio containing the same wording “MITTAL”, such as the domain name <mittalsteel.com> registered since January 3, 2003 and <mittal-steel.com> registered since May 18, 2009.

The disputed domain name <mittalsteels.net> was registered on July 1, 2023 and resolves to parking page. Besides, MX servers are configured.

PARTIES CONTENTIONS

COMPLAINANT:

1. Identical or confusingly similar

The Complainant states that the disputed domain name is confusingly similar to its trademarks “MITTAL” and “MITTAL STEEL”. Indeed, the Complainant’s trademarks are included in their entirety.

The obvious misspelling of the Complainant’s trademark “MITTAL STEEL”, i.e. the addition of the letter “S” is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant’s trademarks and the disputed domain name. Previous panels have found that the slight spelling variations does not prevent a domain name from being confusing similar to the Complainant’s trademark.

Furthermore, the Complainant contends that the addition of the gTLD “.NET” does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

Consequently, the disputed domain name is confusingly similar to Complainant’s trademarks “MITTAL” and “MITTAL STEEL”.

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

According to WIPO Case No. D2003-0455 Croatia Airlines d. d. v. Modern Empire Internet Ltd., the 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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <mittalsteels.net> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademarks, or apply for registration of the disputed domain name by the Complainant.

Moreover, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark “MITTAL STEEL”. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users’ typographical errors and can evidence that a respondent lacks rights and legitimate interests in the domain name.

The disputed domain name redirects to a parking page. Therefore, the Complainant contends that the Respondent did not make any use of disputed domain name since the registration, and it confirms that Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain names.

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

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

The Complainant contends that the disputed domain name is confusingly similar to its distinctive trademarks “MITTAL” and “MITTAL STEEL”. Prior UDRP panels have established that the trademarks are well-known.

Given the distinctiveness of the Complainant’s trademarks and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant’s trademarks.

Moreover, the Complainant states the misspelling of the trademark “MITTAL STEEL” was intentionally designed to be confusingly similar with the Complainant’s trademark. Previous UDRP Panels have seen such actions as evidence of bad faith.

Furthermore, the disputed domain name resolves to a parking page. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and 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 rights under trademark law.

Based on this information, previous panels have held that the mere registration of a domain name that is identical or confusingly similar to a well-known or widely-known trademark by an unaffiliated entity may be sufficient to create a presumption of bad faith (WIPO Summary, version 3.0, sections 3.1.4). In addition, the disputed domain name is not used or does not indicate any information about a development project. Such a practice, defined in many previous decisions as "passive holding", is considered as a bad faith use.

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

On those facts, the Complainant contends that Respondent has registered the disputed domain name and is using it in bad faith.

RESPONDENT:

No administratively compliant Response was filed.

RIGHTS

To the satisfaction of the Panel, the Complainant has shown that the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

To the satisfaction of the Panel, the Complainant has 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

To the satisfaction of the Panel, the Complainant has 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 have been met, and there is no other reason why it would be unsuitable for providing the Decision.

PRINCIPAL REASONS FOR THE DECISION

1. Identical or Confusingly Similar

First, the Panel is satisfied that the Complainant has shown it owns rights in the "MITTAL" and "MITTAL STEEL" trademarks, with registration and evidence provided dating the trademark registration back to at least 2006.

Turning to analyze if there is a confusing similarity between the disputed domain name and the trademark, the Panel notes, based on the record at hand, that the disputed domain name reproduces one of the trademarks in its totality, namely "MITTAL STEEL", with an addition of the letter, "S" at the end. The disputed domain name also does not have the space separating the two elements of the trademark. Similarly, the disputed domain name reproduces the totality of the "MITTAL" trademark. With the changes mentioned above mentioned previously, the verbatim reproduction of the trademark is slight and, therefore, immaterial to dispel the confusing similarity between the disputed domain name and the Complainant's trademarks.

This appears to be a typical case of typosquatting, which consists of a common, obvious, or intentional misspelling of a trademark and has been considered by panels to be confusingly similar to the relevant mark for purposes of the first element, as per WIPO Overview 3.0 paragraph 1.9.

Consequently, the Panel determines that the Complaint has satisfied the Policy's first element set under paragraph 4(a)(i).

2. Rights or Legitimate Interests

Turning to the second element, and based on the evidence on record and acknowledging that the Respondent failed to produce any allegations or evidence necessary to demonstrate its rights or legitimate interests in the disputed domain name, the Panel must now review the uncontested facts.

The uncontested facts indicate that a) the Respondent is not commonly known by the disputed domain name; b) the Respondent is not related in any way to the Complainant; c) the Respondent is not authorized to carry out any business activity for the Complainant; d) the Respondent has no license or authorization to use the trademarks; e) the Respondent is not using the disputed domain name and has no demonstrable plans to use the disputed domain name legitimately and f) the Respondent is likely aware of Complainant's well-known trademark.

Based on the above, the record at hand, and on the balance of probability, and considering that the Respondent has failed to respond to the Complainant's contentions, the Respondent has consequently not rebutted the prima facie case, as described in paragraph 2.1 of WIPO 3.0 Overview.

Although the disputed domain name was just recently registered, the above fact pattern on the balance of probabilities, and in conjunction with the activation of the mail exchanger record, MX record suggests that the Respondent has no demonstrable plans to use the disputed domain name legitimately. Had the Respondent provided evidence of said plans, the Panel would have to analyze it, but as things stand, coupled with the previously mentioned activation of the mail exchanger record MX record suggests that the Respondent is using or is preparing to use the disputed domain name to send and receive e-mail, with a likely intention of confusing Internet users. A more thorough analysis of this will be provided below.

The evidence on record leads the Panel to conclude that the Respondent does not have rights or legitimate interests in the disputed domain name.

Consequently, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name. Subsequently, the Complainant has fulfilled the second requirement set under paragraph 4(a)(ii) of the Policy.

3. Registered and Used in Bad Faith

Per the record and evidence at hand, the Panel finds that the Respondent was likely aware of the Complainant and had the Complainant's trademark in mind when registering the disputed domain name. This is further reinforced by the fact that "MITTAL" and "MITTAL STEEL" trademarks are well-known, distinctive trademarks worldwide, which the Respondent reproduces, albeit with a slight change reminiscent of typosquatting.

Additionally, based on the record at hand and on the balance of probability, it appears that the Respondent is using the well-known "MITTAL" and "MITTAL STEEL" trademarks to pass off as the Complainant and deceive Internet users. This is reinforced by the activation of the mail exchanger record MX record, which suggests that the Respondent is likely using or is preparing to use the disputed domain name to send and receive e-mail. As there is no Response or evidence to suggest otherwise, the Panel is left with no option but to arrive at this conclusion on the balance of probability.

The preceding analysis leaves the Panel no other option than to conclude that the most likely intention of the Respondent was to intentionally attempt to attract, for commercial gain, Internet users to its website/disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and/or disputed domain name, as per illustrated under paragraph 3.1 of WIPO 3.0 Overview.

In light of the case's circumstances, based on the available records, the Panel finds that the Complainant has proven that the disputed domain name was registered and is used in bad faith according to paragraph 4(a)(iii) of the Policy.

4. Decision

For the preceding reasons and in concurrence with the provisions specified under Paragraph 4(i) of the Policy and Paragraph 15 of the Rules, the Panel orders the transfer of the disputed domain name to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **mittalsteels.net**: Transferred

PANELLISTS

Name **Rodolfo Rivas Rea**

DATE OF PANEL DECISION 2023-08-02

Publish the Decision