

Decision for dispute CAC-UDRP-105644

Case number **CAC-UDRP-105644**

Time of filing **2023-07-21 08:42:07**

Domain names **oarcelormittal.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **ARCELORMITTAL**

Complainant representative

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

Respondent

Organization **VANESSA RIBEIRO**

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <oarcelormittal.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- International trade mark registration no. 947686, registered on 3 August 2007, for the word mark ARCELORMITTAL, in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 of the Nice Classification.

(Hereinafter, 'the Complainant's trade mark'; 'the Complainant's trade mark ARCELORMITTAL'; or 'the (trade mark) ARCELORMITTAL' (trade mark) interchangeably).

The disputed domain name was registered on 16 July 2023 and, at the time of writing of this decision, it does not resolve to an active website ('the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant's statements of fact can be summarised as follows:

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.

In addition to the trade mark mentioned in the section 'Identification of Rights', the Complainant also owns numerous domain names, including <arcelormittal.com>, which was registered in 2006.

B. Respondent's Factual Allegations

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's factual allegations are uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

I. The disputed domain name is confusingly similar to trade marks in which the Complainant has rights

The Complainant avers that the disputed domain name is confusingly similar to the Complainant's trade mark ARCELORMITTAL, to the extent that the disputed domain name incorporates the Complainant's trade mark in its entirety. The addition of the letter 'o' in the disputed domain name string is characteristic of the typosquatting practice, which does not prevent a finding of confusing similarity with the ARCELORMITTAL trade mark. Furthermore, the generic Top-Level Domain (gTLD) suffix (<.com>) is typically disregarded in the assessment of identity or confusingly similar under paragraph 4(a) of the UDRP Policy.

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

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent does not carry out any activity for, or has any business with, the Complainant. Neither licence nor authorisation has been given to the Respondent to make any use of the Complainant's trade mark, or to apply for registration of the disputed domain name on the Complainant's behalf.

The Complainant also asserts that the Respondent is not known by the disputed domain name.

Lastly, the Complainant claims that the disputed domain name is a typosquatted version of the ARCELORMITTAL trade mark, and that such practice evidences the Respondent's lack of rights of legitimate interest in the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant contends that the trade mark ARCELORMITTAL is well-known and distinctive, and that its notoriety has been acknowledged in prior UDRP decisions, namely: CAC Case No. 101908, ARCELORMITTAL v China Capital; and CAC Case No. 101667, ARCELORMITTAL v Robert Rudd.

The Complainant further contends that (i) the misspelling of the trade mark ARCELORMITTAL in the disputed domain name string was intentionally designed to be confusingly similar with the Complainant's trade mark; and (ii) given the distinctiveness and reputation of the trade mark ARCELORMITTAL, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trade mark ARCELORMITTAL.

Use

The Complainant states that the Respondent has not demonstrated any activity in respect of the disputed domain name, which remains inactive. Furthermore, the Complainant claims that it is not possible to conceive any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trade mark law.

The Complainant further states that prior WIPO UDRP panels have held that the incorporation of a famous trade mark into a domain name, coupled with an active website, may be evidence of bad faith registration and use.

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent's Submissions

The Respondent has failed to serve a Response in this UDRP administrative proceeding, the result of which being that the Complainant's submissions are uncontested.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP 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

A. General

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

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

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'ARCELORMITTAL' since 2007.

The disputed domain name <arcelormittal.com> was registered on 16 July 2023, and it is composed of the term 'arcelormittal' and the adjacent keyboard letter 'o'.

The Complainant's trade mark ARCELORMITTAL is wholly incorporated into the disputed domain name. The adjacent keyboard letter 'o' in the disputed domain name string is rather immaterial to produce any distinctive character and, in turn, insufficient overall to dispel the textual, auditory, and visual confusion with the trade mark ARCELORMITTAL. Furthermore, and as rightly asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this Policy ground given that the gTLD is part of the domain name's anatomy.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in this UDRP proceeding. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the

disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel is likewise unconvinced that, before any notice of the dispute, the Respondent used, or made demonstrable preparations 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.

The Respondent has failed to refute the Complainant's prima facie case that it has met its burden under the second UDRP Policy ground.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant's trade mark has been registered since 2007;
- The Complainant operates its activities through the domain name <arcelormittal.com>, which was registered in 2006;
- The disputed domain name <oarcelormittal.com> was registered in 2023;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name;
- UDRP panels have consistently held that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trade mark can by itself create a presumption of bad faith (paragraph 3.1.4 of the WIPO Panel Views on Selected UDRP Questions, Third Edition ('WIPO Jurisprudential Overview 3.0')), and the Panel accepts that the Complainant's trade mark is widely known in its segment of business; and
- The Respondent's default in this UDRP proceeding.

D.2 Use in bad faith

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

'(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 respondent's website or location.'

As mentioned in the above section 'Identification of Rights', the disputed domain name does not currently resolve to an active website, and there is no evidence that an URL has ever been captured for the disputed domain name.

The Panel has therefore consulted paragraph 3.1.4 (circumstances (iv) above) and paragraph 3.3 (passive holding) of the WIPO Jurisprudential Overview 3.0 to form its view on the use of the disputed domain name under this UDRP Policy ground. In the Panel's assessment, the factors which attach weight to the Complainant's case are as follows: (i) the degree of reputation of the Complainant's trade mark; (ii) the Complainant's trade mark registration and use of an almost identical domain name <arcelormittal.com> for over 15 years before the Respondent's registration of the disputed domain name; (iii) the actual confusion between the disputed domain name and the Complainant's trade mark; (iv) the lack of the Respondent's own rights to, or legitimate interests in, the disputed domain name; (v) the failure of the Respondent to present a credible-backed rationale for registering the disputed domain names; and (vi) the overall unlikelihood of any good faith use of the disputed domain name.

Accordingly, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **oarcelormittal.com**: Transferred

PANELLISTS

| | |
|------|----------------------|
| Name | Gustavo Moser |
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DATE OF PANEL DECISION 2023-08-15

Publish the Decision