Decision for dispute CAC-UDRP-105722

Case number	**CAC-UDRP-105722**
Time of filing	**2023-08-22 07:26:38**
Domain names	**arcelormittalz.com**

Case administrator

Organization	**Iveta Špiclová (Czech Arbitration Court) (Case admin)**

Complainant

Organization	**ARCELORMITTAL**

Complainant representative

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

Respondent

Name	**Derreck Benoit**

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, ARCELORMITTAL S.A., states and provides evidence to support that it is the owner of international trademark registration n° 947686 ARCELORMITTAL (registered on August 3, 2007), predating the date of registration of the disputed domain name <arcelormittalz.com>.

The Complainant further states that it also owns an important domain name portfolio, including the exact distinctive wording "ARCELORMITTAL", such as the domain name <arcelormittal.com> registered since January 27, 2006.

The disputed domain name <arcelormittalz.com> was registered on August 7, 2023, and resolves to a parking page.

FACTUAL BACKGROUND

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

PARTIES' CONTENTIONS:

COMPLAINANT:

• The disputed domain name is confusingly similar to the protected mark

According to the Complainant, the disputed domain name <arcelormittalz.com> is confusingly similar to its trademark ARCELORMITTAL. The Complainant contends that the addition of the letter “Z” and the gTLD “.COM” 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.

• Respondent does not have any rights or legitimate interest in the disputed domain name

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name and it is not related in any way to 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 trademark ARCELORMITTAL, or apply for registration of the disputed domain name by the Complainant.

The Complainant also claims that the disputed domain name is a typosquatted version of the trademark ARCELORMITTAL.

Finally, the disputed domain name points to a parking page. The Complainant contends that the Respondent did not use the disputed domain name, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name.

• The disputed domain name has been registered and is being used in bad faith

According to the Complainant, the Respondent has registered the disputed domain name and is using it in bad faith. The Complainant contends that the disputed domain name <arcelormittalz.com> is confusingly similar to its distinctive trademark ARCELORMITTAL.

The Complainant states that given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.

Furthermore, the disputed domain name points 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 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.

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

PARTIES CONTENTIONS

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

The UNIFORM DOMAIN NAME DISPUTE RESOLUTION POLICY (UDRP) of the Internet Corporation for Assigned Names and Numbers (ICANN) (the “Policy”) provides that complainant must prove each of the following to obtain transfer or cancellation of the domain name:

1. that respondent’s domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

2. that respondent has no rights or legitimate interests in respect of the domain name; and

3. the domain name has been registered and is being used in bad faith.

1) The disputed domain name is confusingly similar to a trademark in which the Complainant has rights

The Complainant has provided evidence and proved to be the owner of the international trademark ARCELORMITTAL. Essentially, the Respondent has appropriated the trademark ARCELORMITTAL by adding letter "Z" to presumably create a confusing similarity between the Complainant’s trademark and the disputed domain name <arcelormittalz.com> and to lead consumers to believe that it is affiliated with the Complainant.

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark ARCELORMITTAL since the mere addition of the letter "Z" does not eliminate any confusing similarity. This is especially true where, as here, the trademark is “the dominant portion of the domain name,” LEGO Juris A/S v. Domain Tech Enterprises, WIPO Case No. D2011-2286, or where the trademark in the domain name represents “the most prominent part of the disputed domain name[] which will attract consumers’ attention.” Kabushiki Kaisha Toshiba dba Toshiba Corporation v. WUFACAI, WIPO Case No. D2006-0768.

Additionally, the disputed domain name not only fully incorporates the ARCELORMITTAL trademark but also includes a purely generic top-level domain (“gTLD”) “com”. Previous UDRP panels have also held that the gTLD “.com” is not to be taken into account when assessing whether a domain name is identical or confusingly similar to a trademark. See e.g., Wiluna Holdings, LLC v. Edna Sherman, FA 1652781 (Forum January 22, 2016).

In conclusion, the Panel finds that the disputed domain name <arcelormittalz.com> is confusingly similar to the Complainant's trademark ARCELORMITTAL.

2) The Respondent lacks rights or legitimate interests in the disputed domain name

Under the Policy, a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy (see WIPO Overview 2.0, paragraph 2.1).

The Panel finds that the Respondent has no legal right to use the term “ARCELORMITTAL” as part of its domain name. The Respondent is not in any way connected with the Complainant, nor is it authorized to register the disputed domain name or use its intellectual property rights for its operations as a licensee or in any capacity. In addition, the disputed domain name resolves to a parking page. This, in the Panel's view, only confirms that the Respondent has no demonstrable plan to use the disputed domain name.

In the present case, the Respondent failed to file a Response in which it could have provided evidence in support of its rights or legitimate interests. Therefore, all these circumstances are sufficient to establish a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name.

The Panel thus takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name.

3) The disputed domain name has been registered and is being used in bad faith

The Panel finds that the disputed domain name <arcelormittalz.com> is confusingly similar to the Complainant's distinctive trademark ARCELORMITTAL which is widely known and well-established. Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The Panel finds that such actions constitute bad faith under paragraph 4(b)(iv) of the Policy, which provides: "by using the domain name, respondent has intentionally attempted to attract, for commercial gain, Internet users to respondent's web site 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 respondent's web site or location or a product or service on respondent's web site or location."

The fact that a complainant’s trademark has a strong reputation and is widely used and the absence of evidence whatsoever of any

actual or contemplated good faith use are further circumstances that may evidence bad faith registration and use in the event of passive use of domain names (see section 3.3, WIPO Overview 3.0).

In the present case, the Panel believes that the Complainant's ARCELORMITTAL trademark is distinctive and widely used, which makes it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent.

Finally, the disputed domain name resolves to a parking page and is not used for bona fide offerings. The Panel finds that Respondent's lack of content in the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy 4(c)(i) and (iii). Countless UDRP decisions confirmed that the passive holding of a domain name with the knowledge that the domain name infringes another party's trademark rights is evidence of bad faith registration and use (see, in this regard, Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and also the panels' consensus view on this point, as reflected in the "WIPO Overview of WIPO Views on Selected UDRP Questions" in paragraph 3.2.).

For all reasons stated above, the Panel is satisfied that the Complainant has proven the third element of the Policy, which is that the Respondent's registration and use of the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arcelormittalz.com**: Transferred

PANELLISTS

Name	**Barbora Donathová**

DATE OF PANEL DECISION 2023-09-18

Publish the Decision