

Decision for dispute CAC-UDRP-105737

Case number	CAC-UDRP-105737
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Time of filing	2023-08-29 08:59:12
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Domain names	arcelortrade.com
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Case administrator

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

Organization	ARCELORMITTAL
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	Vintech Capital Trading Platform
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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 the holder of the international word mark ARCELOR registered under No. 778212 since February 25, 2002, covering goods and services in classes 1, 6, 9, 12, 37, 40, 42.

FACTUAL BACKGROUND

The Complainant, ARCELORMITTAL, is a company specialized in the production of steel. The Complainant is the largest steel producing company in the world with 59 million tons crude steel made in 2022 and sold in 155 countries.

The Complainant is the owner of the registered international word mark ARCELOR in several classes since 2002, and also owns domain names such as <arcelor.com> and <arcelor-steel.com>.

The disputed domain name <arcelortrade.com> has been registered on August 10, 2023 and appears to be inactive.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant considers the disputed domain name to be confusingly similar to a trademark in which it has rights. The Complainant claims that the Respondent has no rights or legitimate interests in respect of the disputed domain name. According to the Complainant, the Respondent is not commonly known by the disputed domain name, is not affiliated with the Complainant and has not been authorized to register or use the disputed domain name or the Complainant's mark. The Complainant claims that the disputed domain name being inactive demonstrates that the Respondent has no demonstrable plan to use the disputed domain name. Finally, the Complainant considers that the disputed domain name was registered and is being used in bad faith. The Complainant contends 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. The Complainant further claims that 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.

RESPONDENT:

The Respondent did not reply to the Complainant's contentions.

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

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

The onus is on the Complainant to make out its case and it is apparent, both from the terms of the Policy and the decisions of past UDRP panels, that the Complainant must show that all three elements set out in Paragraph 4 (a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof is the balance of probabilities.

Thus, for the Complainant to succeed it must prove, within the meaning of Paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
2. The 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.

The Panel has therefore dealt with each of these requirements in turn.

1. Identity of confusing similarity

The Complainant must first establish that there is a trademark or service mark in which it has rights. Since the Complainant is the holder of the registered ARCELOR trademark, which is used in connection with the Complainant's steel production business, it is established that there is a trademark in which the Complainant has rights.

The disputed domain name <arcelortrade.com> incorporates the Complainant's ARCELOR trademark in its entirety, merely adding the term "trade". In the Panel's view, this addition does not prevent the Complainant's trademark from being recognizable within the disputed domain name (see section 1.8 WIPO Overview 3.0; *IM PRODUCTION v. Xue Han*, CAC Case No. 104877 <isabel-marantus.com>).

Additionally, it is well established that the Top Level Domains ("TLDs") such as ".com" may be disregarded when considering whether the disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights (see section 1.11 WIPO Overview 3.0).

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark. Accordingly, the Complainant has made out the first of the three elements that it must establish.

2. No rights or legitimate interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is established case law that it is sufficient for the Complainant to make prima facie showing that the Respondent has no right or legitimate interest in the disputed domain name in order to shift the burden of proof to the Respondent (see section 2.1 WIPO Overview 3.0 and *Champion Innovations, Ltd. V. Udo Dussling* (45FHH), WIPO case No. D2005-1094; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO case No. D2003-0455; *Belupo d.d. v. WACHEM d.o.o.*, WIPO case No. 2004-0110).

The Panel notes that the Respondent has not been commonly known by the disputed domain name and that the Respondent has not acquired trademark or service mark rights. According to the information provided by the Registrar, the Respondent is known as "Vintech Capital". The Respondent's use and registration of the disputed domain name was not authorized by the Complainant. There are no indications that a connection between the Complainant and the Respondent existed.

Fundamentally, a respondent's use of a domain name will not be considered "fair" if it falsely suggests affiliation with the trademark owner. The correlation between a domain name and the complainant's mark is often central to this inquiry. Generally speaking, UDRP panels have found that where a domain name consists of a trademark plus an additional term, such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner (see section 2.5.1 WIPO Overview 3.0). The disputed domain name incorporates the Complainant's ARCELOR trademark in its entirety, merely adding the term "trade". In the Panel's view, this combination may even increase the risk of confusion with the Complainant as it can easily be considered as referring to the trading activity of the Complainant. Moreover, the majority of the results of an online search for the terms "ARCELOR TRADE" refer to the Complainant. Therefore, the Panel finds that the disputed domain name carries a risk of implied affiliation with the Complainant and cannot constitute fair use.

Moreover, the Panel observes that the disputed domain name appears to be inactive, and neither the Respondent nor the facts of the case indicate any demonstrable preparations to a good faith use of the disputed domain name. The passive holding or non-use of domain names is, in appropriate circumstances, evidence of a lack of rights or legitimate interests in the domain names (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. D2011-2209; *Facebook, Inc. v. Mirza Azim*, WIPO Case No. D2016-0950; *American Home Products Corporation v. Ben Malgioglio*, WIPO Case No. D2000-1602; and *Vestel Elektronik Sanayi ve Ticaret AS v. Mehmet Kahveci*, WIPO Case No. D2000-1244).

The Respondent had the opportunity to demonstrate its rights or legitimate interests but did not do so. In the absence of a Response from the Respondent, the prima facie case established by the Complainant has not been rebutted.

Therefore, the Panel finds that the Complainant has established that the Respondent has no rights or legitimate interests in the disputed domain name. In light of the above, the Complainant succeeds on the second element of the Policy.

3. Bad faith

Complainant must prove on the balance of probabilities that the disputed domain name was registered in bad faith and that it is being used in bad faith (see section 4.2 WIPO Overview 3.0 and e.g. *Telstra Corporation Limited v. Nuclear Marshmallow*, WIPO Case No. D2000-0003; *Control Techniques Limited v. Lektronix Ltd*, WIPO Case No. D2006-1052).

According to the Panel, the awareness of a respondent of the complainant and/or the complainant's trademark rights at the time of registration can evidence bad faith (see *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. D2011-2209; *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No.

D2001-1070).

In the instant case, the Panel finds that the Respondent must have had knowledge of the Complainant's rights in the ARCELOR trademark at the moment it registered the disputed domain name, since the disputed domain name incorporates the Complainant's distinctive ARCELOR trademark in its entirety and only adds a generic word which can easily be linked to the Complainant's activities. Moreover, the Complainant's mark has been registered more than 20 years before the disputed domain name. Finally, the reputation of the Complainant's ARCELOR trademark has been confirmed by several UDRP panels (see e.g. *Arcelormittal (SA) v. floyd martins*, WIPO Case No. DME2018-0005).

The Panel observes that the Respondent is not presently using the disputed domain name. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain names may be put (see section 3.3 WIPO Overview 3.0).

In the present case, the Panel is of the opinion that all of the above factors apply:

- the Panel finds that the Complainant's ARCELOR trademark is distinctive and well-known;
- the Respondent did not submit any response or provided any evidence of actual or contemplated good-faith use;
- the information provided by the Registrar does not include a correct physical address;
- given the confusing similarity with the Complainant's mark and the combination with the generic term "trade", the Panel finds it difficult to conceive any plausible legitimate future use of the disputed domain name by the Respondent.

Finally, the Respondent did not formally take part in the administrative proceedings. According to the Panel, this serves as an additional indication of the Respondent's bad faith.

Therefore, the Panel finds that, on the balance of probabilities, it is sufficiently shown that the disputed domain name was registered and is being 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. **arcelortrade.com**: Transferred

PANELLISTS

Name	Flip Petillion
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DATE OF PANEL DECISION 2023-10-10

Publish the Decision