

Decision for dispute CAC-UDRP-105759

Case number	CAC-UDRP-105759
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Time of filing	2023-09-06 10:13:57
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Domain names	arcelornitall.com
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Case administrator

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

Organization	ARCELOMITTAL
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	taginc
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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 owner of the international trademark No. 947686 "ARCELOMITTAL" (word) registered from August 3, 2007 at the date of filing of the Complaint internationally registered inter alia in the European Union.

FACTUAL BACKGROUND

The Complainant is a world's leading steel company with over 59 million of tons of crude steel made in 2022.

The Complainant owns inter alia the domain name <arcelormittal.com> registered since January 27, 2006.

The disputed domain name was registered by the Respondent on August 28, 2023, and resolved to a parking website. The disputed domain name has active "MX" records.

PARTIES CONTENTIONS

1. Complainant

The Complainant claims that the disputed domain name is confusingly similar to its trademark ARCELORMITTAL. The Complainant contends that the apparent misspelling of the Complainant's trademark ARCELORMITTAL, namely the substitution of the letter "M" for the letters "RN", the deletion of the letter "T", and the addition of the letter "L", is characteristic of a typosquatting practice intended to create a confusing similarity between the Complainant's trademark and the disputed domain name.

Further, Complainant alleges that Respondent has no rights or legitimate interests in the disputed domain name.

Specifically, Complainant alleges that (i) Respondent is not identified in the Whois database by the disputed domain name and is not affiliated with Complainant in any way, (ii) Complainant does not perform any activity for, nor has any business with, Respondent, (iii) that the disputed domain name is a typo-squatted version of the trademark ARCELORMITTAL, and (iv) that the disputed domain name points to a parking page containing commercial links.

Complainant alleges that Respondent has registered and is using the disputed domain name in bad faith. The Complainant asserts that the ARCELORMITTAL trademark is well known and that the reputation of the ARCELORMITTAL trademark has been confirmed in previous CAC cases No. 101908 and No. 101667.

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

Furthermore, the Complainant alleges that (i) the misspelling of the trademark ARCELORMITTAL is intentionally designed to be confusingly similar to the Complainant's trademark, (ii) the disputed domain name points to a parking page with commercial links that the Respondent has attempted to use the Complainant's trademarks to attract Internet users to its own website for commercial gain, which is evidence of bad faith.

Finally, the Complainant alleges that the disputed domain name has been set up with MX records indicating that it may be actively used for e-mail purposes. These actions are evidence of bad faith.

2. Respondent

No administratively compliant response has been submitted by the Respondent.

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).

The Complainant has successfully demonstrated that it is the rightful owner of the word mark "ARCELORMITTAL", which is legally protected in numerous countries. The Panel recognizes that the Complainant's ARCELORMITTAL trademark is clearly identifiable in the disputed domain name and agrees with the Complainant that the mere replacement of the letter "M" with the letters "RN", the deletion of the letter "T", and the addition of the letter "L", which the Panel considers to be an obvious and intentional misspelling, are not sufficient to prevent the likelihood of confusion with the Complainant's trademark.

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).

A complainant is required to establish a prima facie case that the respondent lacks rights or legitimate interests. Once such a case is made, the burden of proof shifts to the respondent to demonstrate their rights or legitimate interests in the disputed domain name. Failure to do so results in the complainant satisfying paragraph 4(a)(ii) of the Policy (as per Article 2.1 of WIPO Jurisprudential Overview 3.0 and WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

Based on the contentions of the Complainant, the panel finds that the Complainant has successfully established a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

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).

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see Article 3.1. of WIPO Jurisprudential Overview 3.0).

Registration in bad faith

The Panel will consider the following factors in determining bad faith registration of the disputed domain name:

- (a) The reputation of the Complainant and its ARCELORMITTAL mark, as confirmed by prior CAC decisions;
- (b) The inherent distinctiveness of the Complainant's trademark;
- (c) The disputed domain name contains obvious and intentional misspellings of the Complainant's trademarks, which amounts to obvious typo-squatting.

Based on the foregoing, the Panel concludes that the Respondent given its reputation must have been aware of the Complainant and its trademark when it registered the disputed domain name.

The Panel concludes that by registering a domain name that is very similar to the older trademark and to an already commercially established domain name/website, except for obvious misspellings, the Respondent has attempted to unfairly exploit the distinctiveness of the ARCELORMITTAL trademark and website/domain name for commercial gain.

Therefore, the Panel finds that the Respondent registered the disputed domain name in bad faith.

Use in bad faith

The disputed domain name incorporates almost all of the Complainant's distinctive trademark, giving the impression of a connection to the goods/services marketed by the Complainant and creating a likelihood of confusion with its trademark.

The evidence submitted by the Complainant further demonstrates that the Respondent uses the disputed domain name to host a website containing commercial links. The Panel finds that such use is not for any bona fide offerings, but rather an attempt to attract internet users to the website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement. In this regard the Panel finds it is irrelevant that the parking website included a disclaimer that "The Sponsored Listings displayed above are served automatically by a third party. Neither Parking crew nor the domain owner maintain any relationship with the advertisers". In the Panel's view, it was crucial that the domain name owner had enabled such commercial exploitation.

Finally, the Panel verified that MX records were set up for the disputed domain name. An MX record is a resource record in the domain name System that specifies which e-mail server is responsible for accepting e-mail on behalf of a domain name (see WIPO Case No. D2022-0479 CKM Holdings Inc. v. Grant Chonko, Genesis Biosciences). The Panel notes that it is not necessary to assign MX records to a domain name if the registrant does not intend to use the domain name to send and receive e-mail. Activating the MX records to designate an e-mail server and enable e-mail is an action that goes beyond the mere registration of the disputed domain name and indicates that the Respondent has connected the disputed domain name to e-mail servers, which creates a risk that the Respondent may use the disputed domain name for misrepresentation and/or phishing and spamming activities.

Therefore, the Panel finds that the disputed domain name is being used in bad faith.

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 Panel has determined that the disputed domain name is confusingly similar to the Complainant's trademark, and the wording of the disputed domain name indicates typosquatting.

Based on the contentions presented by the Complainant, the Panel has found that the Complainant has satisfactorily made a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

The Panel finds that, based on the Complainant's contentions and evidence, it can be concluded that the Respondent must have been aware of the Complainant's trademark when it registered the disputed domain name, and as such, the Respondent has registered the disputed domain name in bad faith.

Lastly, the Panel has concluded that the Complainant has successfully proven that the disputed domain name is being used in bad faith.

Therefore, for the aforementioned reasons, the Panel orders that the disputed domain name <arcelornnital.com> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arcelornitall.com**: Transferred

PANELLISTS

Name	Karel Šindelka
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DATE OF PANEL DECISION 2023-10-09

Publish the Decision
