

Decision for dispute CAC-UDRP-105843

Case number CAC-UDRP-105843

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Domain names arrcelormittal.com

Case administrator

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

Complainant

Organization ARCELORMITTAL

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name jana grunewald

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 submitted evidence that it is the owner of the international trademark "ArcelorMittal" (wordmark), no. 947686, registered on August 3, 2007, in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42, valid in various countries (hereinafter the "Trademark" or the "Complainant's Trademark"). The Complainant also submitted evidence that it has registered the domain name <arcelormittal.com> on January 27, 2006.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT: The Complainant states that it is a major steel producing company, active worldwide, and the market leader in steel for use in automotive, construction, household appliances and packaging. The Complainant further states that it is the owner of the Complainant's Trademark and of various domain names, such as the domain name <arcelormittal.com> (since January 27, 2006). The disputed domain name was registered on September 19, 2023. The domain name resolves to a parking page with commercial links. Furthermore, the Complainant states that MX servers are configured.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it. The Respondent never filed any administratively compliant response. The Center received an email dated October 17, 2023 from Dr. iur. Elmar S. Hohmann stating that: "Dear Sir or Madam, with your enclosed letter dated 04.10.2023 you have requested Dr. Jana Grünewald to participate in a conciliation on procedure. The domain arcelormittal.com is unknown to Dr. Grünewald. If you call this up, there are also no references to Dr. Grünewald. First of all, please state in what way there should be a connection on between the aforementioned domain and Dr. Grünewald. With kind regards Dr. iur. Elmar S. Hohmann" The Center replied to this email on the same day, October 17, 2023, but never received any reply. 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. The Panel cannot accept the contentions sent via email which are specified above, because the sender of this email is not a Respondent in this proceedings and did not provide CAC of any information about authorisation by the Respondent.

PRINCIPAL REASONS FOR THE DECISION

Confusing similarity The disputed domain name consists of the Complainant's Trademark "ARCELORMITTAL" with the addition of one letter R, and one letter T. According to the Complainant, the misspelling of the Trademark is characteristic of a "typo squatting" practice. The Complainant argues that a slight spelling variation does not prevent a domain name from being confusingly similar to a trademark. Furthermore, the Complainant argues that the gTLD ".com" does not change the overall impression of the designation as being connected to the Trademark. The Panel notes that the disputed domain name incorporates the entirety of the Complainant's Trademark, with the addition of one letter R and one letter T. The Panel remarks that Section 1.7 of WIPO Overview 3.0, states that "in cases where a domain name contains the whole of a trademark, or where at least one dominant feature of the relevant trademark is recognisable in the domain name, the domain name shall normally be considered confusingly similar to that trademark for the purposes of UDRP status". Section 1.9 of WIPO Overview 3.0 states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark. Under the second and third elements, panels will normally find that employing a misspelling in this way signals an intention on the part of the respondent (typically corroborated by infringing website content) to confuse users seeking or expecting the complainant. Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, (iv) the use of non-Latin internationalized or accented characters, (v) the inversion of letters and numbers, or (vi) the addition or interspersing of other terms or numbers." The Panel is of the opinion that the addition of the letters R and T do not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy. The addition of the letters is a model example of typo squatting, targeting internet users who make typos whilst looking for the Complainant. In addition, the gTLD ".COM" may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights. For these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy. **Rights or legitimate interests** As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that 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 burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the Panel then must weigh all the evidence, with the burden of proof always remaining on the Complainant. The Complainant argues that: The Respondent is not identified in the Whois database as the disputed domain name; The Respondent is not related in any way to the Complainant. The Respondent does not carry out any activity for, nor has any business with the Complainant; The Complainant has not granted a license or an authorization to the Respondent to make use of the Complainant's Trademark or apply for registration of the disputed domain name; The disputed domain name points to a parking page with commercial links, which is not a bona fide offering of goods or services or legitimate non-commercial or fair use; The Respondent did not file an administratively compliant response. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so). The Panel finds that the Respondent does not appear to have any rights or legitimate interests in respect of the disputed domain name from the following facts: The disputed domain name includes the entire Trademark of the Complainant. The addition of the letters R and T do not add any meaning to the Trademark and does not create any rights or legitimate interests in the disputed domain name. There is no evidence that the Respondent is or has been commonly known, by the disputed domain name or by the term "ARRCELORMITTTAL". The WHOIS information does not provide any information that might indicate any rights of the Respondent to use the term "ARRCELORMITTTAL". The Complainant's Trademark has been widely used well before the registration date of the disputed domain name. The disputed domain name was registered on September 19, 2023, whereas the Trademark was registered on August 3, 2007. The disputed domain name resolves to a parking page filled with commercial links. There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain or to misleadingly divert consumers. On the contrary, it appears that the Respondent is taking advantage (or at least intends to take advantage) of the Complainant's name and the registered Trademark to attract consumers making typos and creating a likelihood of confusion. The Respondent does not seem to have any consent or authorisation to use the Trademark or variations thereof and does not seem to be related in any way to the Complainant. The Respondent did not show to have any trademark rights or other rights regarding the terms "ARRCELORMITTTAL". In sum, on the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith The Complainant argues that the disputed domain name is confusingly similar to the Trademark. The Complainant states that the Respondent has registered the domain name with full knowledge of the Complainant and its Trademark, due to the distinctiveness and reputation of the Trademark. The Complainant emphasizes that the Respondent has copied the website of the Complainant to attract Internet users for commercial gain to his own website. The Complainant claims that the Respondent is intentionally creating a false impression of affiliation with the Complainant or endorsement by the Complainant. The Complainant also mentions that the disputed domain name has been set up with MX records, which suggests that it may be actively used for e-mail purposes. The Panel weighs these arguments and facts as follows: First, as mentioned already, the disputed domain name reproduces the Complainant's Trademark "ArcelorMittal" entirely, with the mere addition of the letters R and T. The addition of these letters does not add any meaning to the disputed domain name and does not take away a risk of confusion among the public. Second, the Complainant's Trademark predates the registration of the disputed domain name with more than 10 years. Third, the Complainant's Trademark covers the territory of Germany, i.e., the Respondent's home country. Fourth, the Panel emphasises that the term "ArcelorMittal" has no general meaning in any language, and in fact refers to the names of a European steelmaker "Arcelor" and its acquiror "Mittal". It is therefore inconceivable that the Respondent would have come up with a domain name consisting of the term "ARRCELORMITTTAL" without having prior knowledge of the Complainant and its Trademark and activities. On the balance of probabilities, it is evident that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence and scope of the Complainant's Trademark at the time of registration and use of the disputed domain name. Fifth, the Respondent does not seem to use the disputed domain name for a bona fide offering of goods or services, and not for a legitimate non-commercial or fair use. On the contrary, it appears that the Respondent is taking advantage (or at least intends to take advantage) of the Complainant's name and registered Trademark to attract consumers making typos and creating a likelihood of confusion for commercial gain, by adding commercial links. The Respondent did not contest any of the Complainant's arguments and did not provide any explanation concerning its choice for registering and using a domain name that includes the Complainant's registered Trademark with the addition of the letters R and T. Given the arguments and facts described above, the Panel finds that the disputed domain name is not being used for any bona fide offering of goods or services. The disputed domain name is rather used to misleadingly attract internet users for commercial gain, which is clear evidence of bad faith (see WIPO overview 3.1.). The Panel is convinced that the Respondent had the Complainant and its Trademark in mind when registering and subsequently using the disputed domain name as a parking page filled with commercial links. The Panel concludes that the disputed domain name is being used for the purpose of misleading Internet users. There is no evidence whatsoever of any bona fide offering of goods. For all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. arcelormittal.com: Transferred

PANELLISTS

Name	Bart Van Besien
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DATE OF PANEL DECISION 2023-10-28

Publish the Decision
