

Decision for dispute CAC-UDRP-105940

Case number	CAC-UDRP-105940
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Time of filing	2023-11-08 09:46:22
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Domain names	arcelormittal.cloud
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Case administrator

Name	Olga Dvořáková (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

Name	Juan Alonso
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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 Number 947686 for ARCELORMITTAL registered on August 3, 2007

FACTUAL BACKGROUND

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

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 with 59 million tons crude steel made in 2022. It holds sizable captive supplies of raw materials and operates extensive distribution networks. It operates its business under the name ARCELORMITTAL and is the owner of international trademark Registration No. 947686 for this name dating to August 3, 2007. The Complainant also owns a number of domain names that reflect its trademark including <arcelormittal.com> which was registered and has been in use by the Complainant since 2006.

The disputed domain name was registered on October 29, 2023 and resolves to a blank page with a message „The content of the page cannot be displayed“. The domain name also has Mail Exchange (MX) servers 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.

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

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

Paragraph 15(a) of the Rules directs the Panel to decide this case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Further, as UDRP proceedings are administrative in nature, the standard of proof is the balance of probabilities (i.e., more likely than not). *Simyo GmbH v. Domain Privacy Service FBO Registrant / Ramazan Kayan*, D2014-2227 (WIPO February 27, 2015); *LoanDepot.com v. Liu Yuan*, FA 1762239 (FORUM January 15, 2018).

1. Confusing Similarity

The Complainant has established its rights to the ARCELORMITTAL trademark through its submission into evidence of an international trademark registration that covers many countries, as well as through submission of a screenshot of its own www.arcelormittal.com website showing actual use of the trademark. The disputed domain name combines an identical copy of the Complainant's trademark with the ".cloud" gTLD. This addition is very minor and does not dispel the confusing similarity between the disputed domain name and the Complainant's trademark. *Compagnie Générale des Etablissements Michelin v. Way Su*, D2016-2221 (WIPO December 28, 2016) ("The disputed domain name <michelin.mom>, other than the new gTLD '.mom', is identical to the Complainant's trademark.").

Therefore the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy because the disputed domain name is identical to the trademark of the Complainant.

2. Rights or Legitimate Interests:

Paragraph 4(c) of the Policy sets out certain circumstances which, if proven by the evidence presented, may demonstrate a respondent's rights or legitimate interests in respect of a disputed domain name.

The Panel concludes, on the basis of the Complainant's undisputed contentions, that the Respondent has not made use of the disputed domain name in connection with a bona fide offering of goods or services as noted in paragraph 4(c)(i) of the Policy. The Respondent has not been authorized to use the Complainant's ARCELORMITTAL trademark, either as domain name or in any other way. Rather, the Respondent is using the disputed domain name to resolve to a blank page that contains only the message "The content of the page cannot be displayed". Therefore, this Panel concludes that the disputed domain name fully incorporates the Complainant's ARCELORMITTAL trademark and that the Respondent is seeking to divert Internet users who are trying to reach the Complainant but, due to the confusing similarity of the disputed domain name with the Complainant's trademark, end up at the Respondent's website instead. Past decisions under the Policy have held that such use of the disputed domain name is not a bona fide offering of goods or services. See, e.g., *DIGITAL CLASSIFIEDS FRANCE v. Carlos Ramirez Fuentes*, UDRP-105639 (CAC August 17, 2023) (no bona fide use found where "the Complainant has demonstrated that the disputed domain name did not in the past, and still does not, connect to any relevant content on the Internet, but is passively held by the Respondent instead.").

Further, as the Whois record for the disputed domain name identifies the Registrant only as Juan Alonso and the Respondent has submitted no Response nor made any other submission in this case, there is no evidence before this Panel to suggest that the Respondent is commonly known by the disputed domain name or that it has any trademark rights associated with the name "ARCELORMITTAL" under paragraph 4(c)(ii) of the Policy.

Finally, it cannot be said that the Respondent has made a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain as noted in paragraph 4(c)(iii) of the Policy. There is no evidence of record to show, and this Panel is not aware of any information to indicate that the word "arcelormittal" has any generic or descriptive meaning. Nor does it appear that the disputed domain name and its resulting pay-per-click parked website are referring to the Complainant's trademark in any nominative or other classic fair use manner such as for the purpose of commentary, news reporting, grievance, education, or the like.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) and of the Policy and demonstrated that the Respondent has no rights or legitimate interests in the disputed domain name.

3. Bad Faith Registration and Use:

In order to prevail in a dispute, paragraph 4(a)(iii) of the Policy requires that a Complainant prove that the domain name has both been registered and is being used in bad faith.

The Complainant states that it is the largest steel producing company in the world and is the market leader in steel for use in a variety of products and industries. As such, its ARCELORMITTAL trademark is well-known and has been recognized as such in prior cases brought by the Complainant. See, e.g., ArcelorMittal SA v. Tina Campbell, DCO2018-0005 (WIPO March 28, 2018) (“The Panel finds that the trademark ARCELORMITTAL is so well-known internationally for metals and steel production that it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it.”) This fact, combined with the disputed domain name’s use of the coined word ARCELORMITTAL, leads this Panel to the conclusion that the Respondent registered the disputed domain name with knowledge of the Complainant’s trademark. It has been held in prior decisions that such activity supports a finding of bad faith domain name registration. 7-Eleven, Inc. v. Charles Rasputin, FA 1829082 (FORUM March 9, 2019) (in relation to the domain name 7eleven delivered.com and others, “Respondent had actual knowledge of Complainant’s rights in the 7 ELEVEN mark at the time of registering the infringing domain names. Actual knowledge of a complainant’s rights in a mark prior to registering a confusingly similar domain name can evince bad faith under Policy 4(a)(iii).”).

As for use, the Complainant has submitted evidence that the disputed domain name resolves to a blank page. Such lack of activity has routinely been held to demonstrate bad faith use of a domain name that is confusingly similar to a complainant’s trademark. BOURSORAMA v. Sahad Mohammed Riviera (Sahari Muti Inc), UDRP-105427 (CAC June 15, 2023) (“a passive holding of a disputed domain name may, in appropriate circumstances, be consistent with the finding of bad faith, in particular in circumstances in which, for example, (1) the Complainant’s trademark is reputed and (2) there is no conceivable use that could be made of the disputed domain name and would not amount to an infringement of the complainant’s trademark’s rights.”) The Panel in this case finds that, in accordance with paragraph 4(b)(iv) of the Policy, the disputed domain name has been used in bad faith as it creates a likelihood of confusion with the ARCELORMITTAL trademark and resolves to a blank website.

Finally, the Complainant notes that the disputed domain name has been configured for mail exchange (MX) servers and claims that this indicates a risk that Respondent using the disputed domain name for email phishing activities. Prior decisions have inferred an intent to use a disputed domain name for sending email based upon the creation of associated MX records. In The Standard Bank of South Africa Limited v. N/A / mark gersper, FA 1467014 (FORUM December 5, 2012), the Panel noted that the “Complainant contends this phishing could be carried out via email and not just through a website. Complainant has examined the domain name’s MX records and they apparently allow the transmission of email, which would not be necessary if the domain name was merely parked. The Panel finds Complainant’s allegations about the possibility of Respondent using the disputed domain name for phishing sufficient...”). This inference has been adopted in other decisions. See, e.g., Pepsico, Inc. v. Allen Othman, UDRP-102380 (CAC April 25, 2019) (“The Complainant submits, fairly, that the preparatory steps in relation to email addresses could enable the inappropriate sending or receipt of email communications purporting to emanate from, or intending to be received by, the Complainant. These preparatory steps (configuring ‘MX’ or mail exchange records) have [been] considered in relation to ‘use’ for the purposes of the Policy by other Panels, which the present Panel has considered of its own motion.”). In the present case, the Complainant submits a screenshot showing that an MX record has been created for the disputed domain name thus indicating that it may be used for the sending and receiving of phishing emails. While, in the abstract, the creation of such record does not indicate any ill intent, in the circumstances of the present case where a domain name that is confusingly similar to the Complainant’s well-known trademark has been created by the Respondent, this MX record does require some further explanation which the Respondent has not provided. As such, the Panel finds that the existence of an MX record for the disputed domain name further supports the conclusion that it has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy.

In light of the above, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) and that the disputed domain name has been registered and 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. **arcelormittal.cloud**: Transferred

PANELLISTS

Name Steven Levy Esq.

DATE OF PANEL DECISION 2023-12-05

Publish the Decision