

Decision for dispute CAC-UDRP-106016

Case number CAC-UDRP-106016

Time of filing 2023-11-30 09:17:50

Domain names arcelormittai.com

Case administrator

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

Complainant

Organization ARCELORMITTAL

Complainant representative

Organization NAMESHIELD S.A.S.

Respondent

Name james bowel

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

In this proceeding the Complainant relies on the following trademark registration:

- International trademark registration under the "Madrid" system "ArcelorMittal" (word) No. 947686, registration date is August 03, 2007, protected inter alia in the US, Singapore, EU, Georgia, Japan, Switzerland, Kazakhstan, Mongolia and China.

The Complainant also refers to various domain names owned by the Complainant that incorporate its "ArcelorMittal" trademark, including <arcelormittal.com>.

FACTUAL BACKGROUND

THE DISPUTED DOMAIN NAME IS IDENTICAL OR CONFUSINGLY SIMILAR TO A TRADEMARK OR SERVICE MARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant alleges that it is the largest steel manufacturing company in the world and is the market leader in steel production for use in automotive, construction, household appliances and packaging with 59 million tons of crude steel produced in 2022.

The Complainant is the owner of the "ArcelorMittal" trademark referred to above and owns the domain name <arcelormittal.com>

registered since January 27, 2006.

The disputed domain name was registered on November 22, 2023 and resolves to a parking page with MX servers configured.

The Complainant claims the disputed domain name is confusingly similar to the "ArcelorMittal" trademark since it includes the trademark of the Complainant in its entirety. The obvious misspelling of the Complainant's trademark (i.e. the substitution of the letters "I" and "L" by the letters "L" and "I") is a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. A slight spelling variation does not prevent confusing similarity.

The Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark.

Therefore, the Complainant claims the disputed domain name is confusingly similar to its "ArcelorMittal" trademark.

THE RESPONDENT HAS NO RIGHTS OR LEGITIMATE INTERESTS IN RESPECT OF THE DISPUTED DOMAIN NAME

The Complainant asserts that the Respondent is not identified in the "Whois" database as the disputed domain name.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name as he is not related in any way with 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, or apply for registration of the disputed domain name.

The Complainant refers to previous UDRP decisions and claims that the disputed domain name is a typosquatted version of its trademark. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can evidence that a respondent lacks rights and legitimate interests in the domain name.

The disputed domain name is inactive (resolves to a parking page) and, in the Complainant's view, this confirms that the Respondent has no demonstrable plan to use the disputed domain name.

Based on the above, the Complainant claims that the second element of the UDRP is evident and prima-facie requirement has been satisfied.

THE DISPUTED DOMAIN NAME WAS REGISTERED AND BEING USED IN BAD FAITH

The Complainant's submissions on the bad faith element of the UDRP can be summarized as follows:

1. The Complainant claims that its "ArcelorMittal" trademark is well-known and refers to previous decisions of UDRP panels that confirm well-known character of the Complainant's trademark.
2. The Complainant alleges that given the distinctiveness of the Complainant's trademark the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark.
3. The Complainant states the misspelling of the trademark "ARCELORMITTAL" was intentionally designed to be confusingly similar to the Complainant's trademark. Previous UDRP Panels have considered such actions as evidence of bad faith.
4. The Complainant relies on the "Telstra" decision (WIPO Case No. D2000-0003, "Telstra Corporation Limited v. Nuclear Marshmallows") and alleges that passive holding in the present case indicates bad faith of the Respondent since it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate and the incorporation of a famous mark into a domain name, coupled with an inactive website indicates bad faith.
5. The fact that MX servers are configured, in the Complainant's opinion, suggests that, despite being inactive, the disputed domain name may be actively used for e-mail purposes.

Therefore, the Complainant claims the disputed domain name was registered and being used in bad faith.

PARTIES CONTENTIONS

The Complainant's contentions are summarized in the Factual Background section above.

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

A. Identical or confusingly similar

The Complainant provides evidence of the international registration for the word mark “ArcelorMittal” protected in various jurisdictions.

As confirmed by the “WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition” (“WIPO Overview 3.0”): “where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case” (see 1.2.1).

The disputed domain name represents an obvious misspelling of the Complainant’s mark, namely the inversion of the letters “I” and “L”.

As stated in WIPO Overview 3.0: “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” (see 1.9).

In the present case, the Complainant’s word trademark is clearly recognizable within the disputed domain name.

The gTLD “.com” is to be disregarded under the confusing similarity test as it does nothing to eliminate confusion.

Therefore, the Panel finds that the first requirement of the Policy has been satisfied.

B. Rights or Legitimate Interests

The general rule is the following:

- (i) a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests; and
- (ii) once such prima facie case is made, the burden shifts to the respondent who has to demonstrate his rights or legitimate interests in respect of the domain name under paragraph 4 (c) of the Policy.

If the respondent fails to do so, the second element of the Policy is satisfied, see **Julian Barnes v. Old Barn Studios, WIPO Case No. D2001-0121; Belupo d.d. v. WACHEM d.o.o., WIPO Case No. D2004-0110.**

The disputed domain name was registered on November 22, 2023. It does not resolve to any active page on the date of this decision.

The Respondent did not respond.

While failure to respond does not per se demonstrate that the Respondent does not have rights or legitimate interests, it allows the Panel to draw such inferences as it considers appropriate (see paragraph 14(b) of the Rules and **CAC Case No. 101284**: “A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable inferences may be drawn

from the information provided by the complainant”).

The Complainant has made a prima facie case of Respondent’s lack of rights or legitimate interests.

The Respondent is not known by the disputed domain name and is identified as an individual with no connection to the Complainant’s business or the disputed domain name.

The Complainant has not granted any license or authorization to use its trademark to the Respondent and the Complainant is not doing any business with the Respondent.

The nature of the disputed domain name is such that it creates an association with the Complainant and its business, it includes a misspelled version of the Complainant’s trademark.

Previous UDRP panels noted that in such circumstances respondent does not have rights or legitimate interests, see e.g. **CAC Case No. 104298**: “The disputed domain names are typosquatted versions of its trademark which is further proof that the Respondent has no rights or legitimate interests under the Policy...”; **CAC Case No. 104715**: “These circumstances suggest to the Panel that the Respondent is seeking to capitalize deliberately on a predictable pattern of mistyping of the Complainant’s mark by such users...” and **CAC Case No. 104778**: “In this case, the Panel finds that the disputed domain name can be considered as virtually identical to the Complainant’s trademark as it simply adds two letters identical to the respective letters next to these, resulting in a high risk of implied affiliation”.

Typosquatting does not create any rights or legitimate interests of the Respondent.

Passive holding of the disputed domain name in the circumstances of this case does not create any rights or legitimate interests of the Respondent.

Therefore, the Panel finds that the Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists non-exhaustive circumstances indicating registration and use in bad faith.

These circumstances are non-exhaustive and other factors can also be considered.

It is well established that 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 3.1 of WIPO Overview 3.0). Targeting is important in establishing bad faith under the UDRP.

The Panel finds that the Complainant provided sufficient evidence that the disputed domain name was registered and is being used in bad faith based on the following:

- The nature of the disputed domain name (“typosquatting”) and the timing of the registration of the disputed domain name – November 22, 2023, many years after the Complainant obtained protection for its trademark and became known under the “ArcelorMittal” mark and name. The nature of the disputed domain name indicates that the Respondent was aware of the Complainant and its trademark when he registered the disputed domain name. As noted in the leading treatise on UDRP and domain disputes by Gerald Levine in relation to typosquatting: “where intent to take advantage of the trademark is evident knowledge is implied” (see “Domain Name Arbitration”, Gerald M. Levine, 2019, Second edition, “Legal Corner Press”, page 496);

- The strength and reputation of the Complainant’s trademark. The Complainant alleges that its “ArcelorMittal” is well-known and refers to previous UDRP decisions. The Panel notes that the Complainant provided only limited evidence of well-known character of the “ArcelorMittal” trademark (copies of webpages of the Complainant’s Internet site with a description of its business and some facts and figures). Normally, more evidence is required to establish that a trademark is well-known/ has a strong reputation (e.g. evidence of awards, publications by independent sources, media reports, etc.). However, this is not fatal to the Complainant in the present dispute. The Panel indeed finds that the mark is widely known despite limited evidence provided by the Complainant. Panel’s own limited independent research of publicly available sources also confirmed well-known character of the Complainant’s trademark (exercising its powers under par. 10 of the UDRP rules) such as “Wikipedia” articles and publicly available publications about the Complainant and its activities in different countries. Besides, previous UDRP decisions relating to the “ArcelorMittal” trademark could be an additional indication of popularity of the Complainant’s trademark. While each UDRP case is unique and has its own set of facts and circumstances, previous decisions in Complainant’s favor can demonstrate that the Complainant’s mark was already targeted by cybersquatters and is popular (see e.g. CAC Case 105238: “The Panel concludes that the Complainant’s “ARCELORMITTAL” trademark is of distinctive character and is well-known” and CAC Case No. 101667: “The Panel is convinced that the Trademark is highly distinctive and well-established”);

- Passive holding of the disputed domain name in the circumstances of this case indicates both registration and use in bad faith. WIPO Overview 3.0 states that “from the inception of the UDRP, panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding” and the panelists “will look at the totality of the circumstances in each case” (see 3.3). The Panel notes that passive holding per se does not indicate bad faith. However, the totality of the circumstances of this dispute proves bad faith of the Respondent, in particular: i) strength of the Complainant’s mark, ii) failure of the Respondent to respond and take part in this proceeding and iii) the implausibility of any good faith use to which the domain name may be put – the Panel does not find any circumstances under which the Respondent could legitimately use the disputed domain name that is so closely associated with the Complainant and is a misspelled version of its trademark. Any possible

explanation of a potential legitimate use is solely within the Respondent's knowledge and the Respondent failed to respond and provide any explanations. The fact that the disputed domain name is not used for any website but MX records are configured is an additional indication of bad faith in the circumstances of this case (see CAC Case No. 105370: "Although the disputed domain name appears to be inactive, it has been set up with MX records, which suggests that it may be actively used for fraudulent email purposes" and CAC Case No. 105258: "the fact that MX servers are configured suggests that the disputed domain name may be actively used for email purposes");

- The Panel finds that this is a clear case of targeting and an attempt to take unfair advantage of the Complainant's trademark and reputation by the Respondent. There are no any rights or legitimate interests of the Respondent taking into account evidence and facts of this case and the only apparent reason for registration of the disputed domain name is an intent of the Respondent to take advantage of the Complainant's mark and business reputation.

Based on the above, the Panel finds that Respondent's behavior falls within, at least, par. 4 b (iv) of UDRP and the Respondent by using the disputed domain name has intentionally attempted to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement and that the Respondent takes unfair advantage of the Complainant's mark.

The Panel holds that the third requirement of the Policy has been satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arcelormlittai.com**: Transferred

PANELLISTS

Name	Igor Motsnyi
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DATE OF PANEL DECISION **2023-12-23**

Publish the Decision
