Decision for dispute CAC-UDRP-106035

Case number	CAC-UDRP-106035
Time of filing	2023-12-04 10:43:11
Domain names	arcelr0mittal.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

The Complainant is owner of the international trademark "ARCELORMITTAL" no. 947686, registered since 3 August 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

It also owns multiple domain names, including <arcelormittal.com> which is registered since 27 January 2006 and resolves to the Complainant's official website.

Finally, the Complainant conducts its business under the company or trade name ARCELORMITTAL (Société Anonyme).

The Complainant’s above-mentioned rights are hereinafter collectively referred to as the ARCELORMITTAL Trademark.

FACTUAL BACKGROUND

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 produced in 2022. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The disputed domain name was registered with privacy service on 27 November 2023 by james bowel, an individual residing in the

USA.

The disputed domain name does not resolve to any active website. However, MX records have been set for the disputed domain name.

PARTIES CONTENTIONS

Complainant:

The Complainant contends that the disputed domain name is a typosquatted version of its well-known ARCELORMITTAL Trademark and, therefore, it is confusingly similar to that mark.

The Complainant also contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not known by the disputed domain name. The Complainant does not have any relationship with the Respondent. The Respondent is neither affiliated with, nor authorized by the Complainant in any way to make any use of the Complainant's ARCELORMITTAL Trademark or to register the disputed domain name. The typosquatting of the Complainant's trademark by the Respondent evidences that he lacks rights and legitimate interests in the disputed domain name. Besides, the Complainant contends that the Respondent did not use the disputed domain name, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name.

Finally, the Complainant contends that, given the distinctiveness and reputation of the ARCELORMITTAL Trademark, it is unlikely that the Respondent had no knowledge of the Complainant's mark when he had registered the disputed domain name confusingly similar to such mark. Moreover, considered that MX servers are set for the disputed domain name, it is inconceivable that the Respondent makes any good faith use of the disputed domain name as part of an e-mail address.

The Complainant, therefore, requests the transfer of the disputed domain name.

Respondent:

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

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:
(i) the disputed domain name is identical or confusingly similar to a trade mark 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 by the Respondent in bad faith.

I. THE COMPLAINANT'S RIGHTS AND CONFUSING SIMILARITY OF THE DISPUTED DOMAIN NAME TO THE COMPLAINANT'S MARK

The Complainant has established that it has rights in the ARCELORMITTAL Trademark since 2007. The trademark of the Complainant was registered prior to the registration of the disputed domain name (27 November 2023) and is valid and well-known worldwide.

In UDRP disputes the test for identity or confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing (see paragraph 1.7 WIPO Overview 3.0).

A domain name which contains sufficiently recognizable aspects of the relevant mark and uses a common, obvious, or intentional misspelling of such trademark is considered by UDRP Panels confusingly similar to the relevant mark for purposes of the first element (see 1.9 WIPO Overview 3.0). 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 interspersion of other terms or numbers. The practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors is commonly called typosquatting.

UDRP panels also agree that the top-level domain (TLD) is usually to be ignored for the purpose of determination of identity or confusing similarity between the disputed domain name and the Complainant's trademark as it is a technical requirement of registration (see 1.11.1 WIPO Overview 3.0).

The disputed domain name consists of an obvious misspelling of the ARCELORMITTAL Trademark, i.e. the inversion of the letters "R" and "O" and the substitution of the letter "O" by the visually similar number "0", plus the TLD ".com".

Therefore, in assessing identity or confusing similarity, the Panel finds that the disputed domain name is confusingly similar to the Complainant's ARCELORMITTAL Trademark because it differs from that mark by merely inverting the letters "R" and "O" and substituting the letter "O" with the number "0" which visually resembles such letter. The inversion of the letters "R" and "O" and the substitution of the letter "O" by the visually similar number "0" in the Complainant's well-known trademark neither affects the attractive power of such trademark, nor is sufficient to distinguish the disputed domain name from the Complainant's mark.

Hence, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the Policy and the disputed domain name is confusingly similar to the Complainant's marks.

II. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS TO THE DISPUTED DOMAIN NAME

It is a consensus view of UDRP panels that the Complainant shall establish a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the Respondent (see 2.1 WIPO Overview 3.0: "[...] where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element").

The Complainant has no relationship with the Respondent whatsoever. The Respondent has never received any approval of the Complainant, expressed or implied, to use the Complainant's ARCELORMITTAL Trademark or to register the disputed domain name.

The Respondent has been identified by the Registrar with the name james bowel, residing in the USA. There is no evidence that the Respondent has been commonly known by the disputed domain name or has acquired any rights in a trademark or trade name corresponding to the disputed domain name.

The disputed domain name is a typosquatted version of the Complainant's well-known trademark. Such practice (i.e., typosquatting), aimed to take advantage of the Internet users' typographical errors, evidences the Respondent's intent to misleadingly divert consumers or to tarnish the Complainant's mark and, thus, the Respondent's lack of rights and legitimate interests in the disputed domain name.

Although the disputed domain name does not resolve to any active website, the Complainant has shown that the Respondent had configured e-mail server (MX) records for the disputed domain name. By connecting e-mail server to the disputed domain name and creating the false impression that it is the Complainant's server, it is implausible that there is any good faith use to which the disputed domain name may be put. Configuring e-mail on the disputed domain name that confuses people into thinking that it belongs to the Complainant is likely part of a fraudulent scheme (phishing), such as to obtain sensitive or confidential personal information, or to solicit payment of fraudulent invoices.

Therefore, the Panel is unconvinced that, before any notice of the dispute, the Respondent used or prepared to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services or

is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the ARCELORMITTAL Trademark.

While the Complainant has established its prima facie case, the Respondent has not submitted a Response to the Complaint and, thus, has failed to invoke any of the circumstances, which could demonstrate rights or legitimate interests in the disputed domain name.

Therefore, the Panel is satisfied that the Complainant has met the second requirement of the paragraph 4(a) of the Policy and finds that the Respondent lacks rights or legitimate interests to the disputed domain name.

III. BAD FAITH REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME

By inverting the letters "R" and "O" and substituting the letter "O" with the number "0", the Respondent has registered the disputed domain name which visually resembles the Complainant's ARCELORMITTAL Trademark, and creates in such way a likelihood of confusion with that mark. Considering the notoriety of the Complainant's activities and its ARCELORMITTAL Trademark worldwide confirmed also by several UDRP decisions (see inter alia CAC Case No. 101908, ARCELORMITTAL v. China Capital, CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd, WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell), it is unlikely that the registration of the disputed domain name may be attributed to a mere chance and not, as is, with a full awareness and intent to exploit the reputation of the Complainant and its mark acquired in these years. The Complainant has also been subject of typosquatting during the past years (see e.g., WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted <arcelormltal.com>).

Furthermore, the Respondent used a privacy service when registering the disputed domain name. Although the use of such service is not in and of itself an indication of bad faith, the circumstances and the manner in which such service is used may however impact a panel's assessment of bad faith (see 3.6 WIPO Overview 3.0).

Finally, the disputed domain name has not been associated with any active website since its registration. UDRP panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding (see 3.3 WIPO Overview 3.0 and in particular Telstra Corporation Limited v. Nuclear Marshmallows WIPO Case No. D2000-0003).

The following factors were considered by the Panel when applying the passive holding doctrine in the present case:

(i) the degree of distinctiveness and/or reputation of the Complainant's trademark;
(ii) the failure of the Respondent(s) 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);
(iv) the implausibility of any good faith use to which the disputed domain name may be put.

Taken into account all circumstances of this case (i.e, the employment of an intentional misspelling during the registration by the Respondent corroborated by the non-use of the disputed domain name), the Panel finds 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 an infringement of the Complainant's trademark under trademark law, a passing off, or an infringement of consumer protection legislation.

Finally, MX records have been set for the disputed domain name, which suggests that it may be actively used for fraudulent e-mail purposes.

Therefore, the Panel finds that the Respondent, by registering and using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to his web site or other on-line location, by creating a likelihood of confusion with the ARCELLORMITTAL Trademark as to the source, sponsorship, affiliation, or endorsement of his web site or location or of a product or service on his web site or location (paragraph 4(b)(iv) of the Policy).

The Complainant has, therefore, discharged the burden of proof to show that the disputed domain name has been registered and is being used in bad faith (paragraph 4(a)(iii) of the Policy).

The disputed domain name is to 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. **arcelr0mittal.com**: Transferred

PANELLISTS

Name	**Ivett Paulovics**

DATE OF PANEL DECISION 2023-12-29

Publish the Decision