Decision for dispute CAC-UDRP-106022

Case number	CAC-UDRP-106022
Time of filing	2023-11-30 09:21:05
Domain names	mittalinvestmevts.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	harris cohen

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 a producer of steel, and is the owner of the MITTAL trademark for which it holds European Trade Mark registration number 003975786, registered on December 1, 2005 for goods and services in classes 6 and 40.

FACTUAL BACKGROUND

The Complainant has an established Internet presence and maintains its principal website at www.arcelormittal.com and has provided evidence of its ownership of the Internet Domain Names <arcemormittal.com> registered on January 27, 2006, and <mittal.eu>, registered on February 23, 2010.

The Disputed Domain Name is <mittalinvestmevts.com> which was registered on November 21, 2023 and resolves to a parking page with commercial links.

There is no information about the Respondent except for that provided in the Compliant, as amended, the Registrar's WhoIs and the

information provided by the Registrar in response to the request by the Centre for details of the registration of the Disputed Domain Name for the purposes of this proceeding.

The Respondent has availed of the facility to have its identity redacted on the published WhoIs, and the Registrar has confirmed that the Respondent is the registrant of the Disputed Domain Name.

PARTIES CONTENTIONS

The Complainant's Contentions

The Complainant claims rights in the MITTAL trademark and service mark established by its ownership of the international trademark and service mark registration described above, and extensive use of the mark in its business as a producer of steel, submitting that it is the market leader in steel for use in automotive, construction, household appliances and packaging, having produced 59 million tons crude steel in the year 2022.

The Complainant adds that it owns and uses Internet domain names that incorporate the word MITTAL in its portfolio, including <arcelormittal.com> and <mittal.eu>, registered since January 27 2006, and February 23, 2010 respectively.

The Complainant alleges that the Disputed Domain Name <mittalinvestmevts.com> is confusingly similar to the trademark MITTAL in which it has rights, arguing that it contains the Complainant's mark in its entirety, and that it is well-established that "a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP". Citing Dr. Ing. h.c. F. Porsche AG v. Vasiliy Terkin WIPO Case No. D2003-0888.

The Complainant adds that the addition of the term "investmevts" is not sufficient to escape the finding that the Disputed Domain Name is confusingly similar to the MITTAL trademark, because it does not change the overall impression of the designation as being connected to the Complainant's trademark.

On the contrary, the addition of a misspelled version of the term "investments" cannot be coincidental, as it directly refers to the Complainant's subsidiary MITTAL INVESTMENTS SARL, registered in Luxembourg, which is an investment company, as shown in the screen capture of a search carried out against the Luxembourg companies register, which has been exhibited in an annex to the Complaint.

Moreover, the Complainant contends that the addition of the generic Top-Level Domain ("gTLD") suffix <.com> does not change the overall impression of the designation as being connected to the trademark MITTAL of the Complainant; that it does not prevent the likelihood of confusion between the Disputed Domain Name and the Complainant, its trademark and its associated domain names associated. Citing F. Hoffmann-La Roche AG v. Macalve e-dominios S.A. WIPO Case No. D2006-0451 ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.").

The Complainant next alleges that the Respondent has no rights or legitimate interests in the Disputed Domain Name arguing that the Respondent is not identified in the WhoIs database as the Disputed Domain Name. Past panels have held that a respondent is not commonly known by a domain name at issue if the registrant's name in the WhoIs information is not similar to the domain name. Citing Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group Forum Claim No. FA 1781783, (The WHOIS information of record identified Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy 4(c) (ii) that Respondent is not commonly known by the disputed domain name <bobsfromsketchers.com>).

The Complainant asserts that the Respondent is not related to the Complainant in any way, adding that the Complainant neither carries out any activity for, nor carries on any business with the Respondent.

It is further asserted by the Complainant that it has granted neither license nor authorization to the Respondent to make any use of the MITTAL trademark, nor to apply for registration of the Disputed Domain Name.

Additionally, the Complainant refers to a screen capture of the website to which the Disputed Domain Name resolves, which is exhibited in an annex to the Complaint, which illustrates that the Disputed Domain Name points to a parking page hosted by the Registrar with commercial links.

The Complainant argues that past panels established under the Policy have found that such use of a domain name does not constitute a bona fide offering of goods or services or legitimate non-commercial or fair use. Citing for instance: Vance Int'l, Inc. v. Abend Forum Case No. FA 970871, (concluding that the operation of a pay-per click website at a confusingly similar domain name does not represent a bona fide offering of goods or services or a legitimate noncommercial or fair use, regardless of whether or not the links resolve to competing or unrelated websites or if the respondent is itself commercially profiting from the click-through fees).

It is next alleged that the Disputed Domain Name was registered and is being used in bad faith.

The Complainant contends that the Disputed Domain Name is confusingly similar to its distinctive MITTAL trademark, arguing that the Complainant is one of the world's leading producers of steel products and enjoys a strong worldwide reputation. it is submitted

that the addition of the term “investmevts”, which it is alleged is a misspelled version of the term “investments”, cannot be a coincidence, as it directly refers to the Complainant’s subsidiary MITTAL INVESTMENTS S.à.r.l.

The Complainant adds that in past proceedings under the Policy the panels have accepted that the MITTAL trademark is well-known. See: ArcelorMittal S.A. v. Registrant of lakshmimittal.org, c/o WHOIStrustee.com Limited / Zeus Holding Market Ltd. WIPO Case No. D2018-1086, ("The Domain Name wholly incorporates a well-known mark [MITTAL]”); Arcelormittal v. Mesotek Software Solutions Pvt. Ltd. WIPO Case No. D2010-2049 (“the Complainant’s marks MITTAL and MITTAL STEEL have been widely used and are well-known.”).

Given the distinctiveness of the Complainant's trademark and its reputation, the Complainant submits that it is reasonable to infer that the Respondent registered the Disputed Domain Name with full knowledge of the Complainant's trademark.

Furthermore, the abovementioned exhibited screen capture shows that the Disputed Domain Name is directed to a parking page with commercial links. The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to its own website by using the Complainant’s trademarks for its own commercial gain, which is an evidence of bad faith. See, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC WIPO Case No. D2018-0497. (“In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.”).

Finally, it is contended that although the Disputed Domain Name appears to be unused, it has been set up with MX records which suggests that it may be actively used for e-mail purposes. Citing JCDECAUX SA v. Handi Hariyono CAC Case No. 102827, (“There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.”).

The Respondent’s Contentions

No administratively complaint 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

The Complainant’s Rights

The Complainant has provided convincing, uncontested evidence that it has rights in the MITTAL mark, established by the trademark and service mark registration described above and the reputation and goodwill that it has established in the mark by extensive use on its business as a producer of steel for use in automotive, construction, household appliances and packaging, having produced 59 million tons of crude steel in 2022.

Confusing Similarity

The Disputed Domain Name is <mittalinvestmevts.com> consists of the Complainant's MITTAL mark in its entirety, in combination with the term "investmevts" and the gTLD extension <.com>.

The Complainant's MITTAL mark is clearly recognizable as being the initial, dominant and only distinctive element in the Disputed Domain Name.

It is well accepted that confusing similarity is typically established once a complainant's trademark is incorporated in its entirety in the domain name at issue.

In the present case, the addition of the term "investmevts" to the Complainant's. mark to create the second level of the Disputed Domain Name does not diminish the confusing similarity of the Disputed Domain Name and the MITTAL mark. The term "investmevts" has no obvious meaning in itself and on the balance of probabilities on first glance, an Internet user would confuse it with the word "investments".

Similarly, the gTLD extension <.com> does not prevent a finding of confusing similarity because in the circumstances of this proceeding, it would be considered to be a necessary technical requirement for a domain name registration.

This Panel finds therefore that the Disputed Domain Name is confusingly similar to the MITTAL mark in which the Complainant has rights, and the Complainant has therefore succeeded in the first element of the test in Policy Paragraph 4(a)(i).

Rights or Legitimate Interests in the Disputed Domain Name

The Complainant has made out a prima facie case that the Respondent has no rights legitimate interests in the Disputed Domain Name submitting that:

- the Respondent is not identified in the Whois database as the Disputed Domain Name, and past panels established under the Policy have held that a respondent was not commonly known by a domain name at issue where the registrant's name in the WhoIs information was not similar to the domain name;

- the Respondent is not related in any way with the Complainant;
- the Complainant neither carries out any activity for, nor any business with the Respondent;
- the Complainant that it has granted neither license nor authorization to the Respondent to make any use of the Complainant's trademark, or apply for registration of the Disputed Domain Name;
- the screen capture of the website to which the Disputed Domain Name resolves, which is exhibited in an annex to the Complaint, illustrates that the Disputed Domain Name resolves to a parking page with commercial links, and past panels established under the Policy have found that such use of a domain name does not constitute a bona fide offering of goods or services or legitimate non-commercial or fair use.

It is well established that once a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

The Respondent has failed to discharge that burden and therefore this Panel must find that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

The Complainant has therefore succeeded in the second element of the test in Policy Paragraph 4(a)(ii).

Registration and Use in Bad Faith

The Complainant has adduced clear and convincing, uncontested evidence that it has established rights in the MITTAL mark, dating back to at least December 1, 2005 when its European Trade Mark registration number 003975786, was registered for goods and services in classes 6 and 40. The Complainant's rights in the MITTAL mark, to which the Disputed Domain Name is confusingly similar, long predate the registration and first possible use of the Disputed Domain Name on November 21, 2023.

The Complainant has shown that its MITTAL mark has gained a substantial reputation and goodwill. It is also a distinctive mark, and it is most improbable that the Disputed Domain Name which has the MITTAL mark as its initial, dominant and only distinctive element, was chosen for any reason other than its similarity to the Complainant's mark.

This finding is supported by the fact that the Disputed Domain Name is almost identical to the name of the Complainant's associate company MITTAL INVESTMENTS S.à.r.l., registered in Luxembourg on March 3, 2004. In the totality of the circumstances of this case, on the balance of probabilities, the element "investmevts", is an intentional misspelling of the word "investments".

Therefore, this Panel finds that on the balance of probabilities the Disputed Domain Name was chosen and registered to infer a reference to the Complainant, its associate corporation, and the MITTAL mark which has acquired a significant reputation and goodwill.

This Panel finds therefore that on the balance of probabilities the Disputed Domain Name was registered in bad faith with the Complainant and its mark in mind to take predatory advantage of the Complainant's goodwill and reputation in the MITTAL mark.

The Complainant has adduced uncontested evidence in the form of a screen capture of a DNS query which confirms that that the Disputed Domain Name redirects to the registrar's parking page. The Complainant has also exhibited the abovementioned screen capture of the Registrar's parking page to which the Disputed Domain Name resolves. The exhibited screen capture shows three tiles which the Complainant avers are clickable links to other web locations.

The uncontested evidence is therefore that the Disputed Domain Name is being passively held by the Respondent, and/or the Respondent is benefitting from click through traffic.

Such passive holding, in circumstances where the Disputed Domain Name is likely to attract, confuse and misdirect Internet users and their web traffic, by creating a false impression that the Disputed Domain Name is in some manner associated with the Complainant or that the webpage to which it resolves has some association with the Complainant and its steel producing business, constitutes bad faith for the purposes of the Policy.

Additionally, insofar as the Respondent may be receiving financial benefit from the click-through traffic on the Registrar's parking page, such use also constitutes bad faith for the purposes of the Policy. In that regard this Panel accepts the Complainant's submission that "whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve […] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith."

Furthermore, in the totality of the circumstances described in the evidence, on the balance of probabilities the Respondent is engaged in typosquatting which also constitutes bad faith use of the Disputed Domain Name for the purposes of this Complaint. The Disputed Domain Name is on the balance of probabilities an intentional misspelling of the terms "MITTAL" and "investments" as discussed above.

It is also of concern that the Respondent, which has no relationship with the mark MITTAL, or the Complainant or the Complainant's subsidiary investment company, has created an MX record for the inactive Disputed Domain Name, as it raises the spectre that it may be a preparatory step towards using the Disputed Domain Name for the purposes of creating an email account.

As this Panel has found that the Disputed Domain Name was registered and is being used in bad faith, the Complainant has succeeded in the third element of the test in Policy paragraph 4(a)(iii).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **mittalinvestmevts.com**: Transferred

PANELLISTS

Name	**James Bridgeman**

DATE OF PANEL DECISION 2024-01-05

Publish the Decision