Decision for dispute CAC-UDRP-106134

Case number	CAC-UDRP-106134
Time of filing	2024-01-04 15:09:12
Domain names	arceiormittal.net

Case administrator

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

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Ben Beasley

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 registered international trademark for ARCELORMITTAL, Registration No.947686 and registered on August 3, 2007 ("the ARCELORMITTAL trademark").

FACTUAL BACKGROUND

The Complainant is a company engaged in the specialized production of steel and is the largest producer of steel in the world. It does this under its aforesaid international trademark for ARCELORMITTAL.

The Complainant owns several domain names such as <arcelormittal.com> registered on January 27, 2006 and which it uses in its business.

The Respondent registered the disputed domain name <arceiormittal.net> on December 28, 2023. The disputed domain name resolves to an inactive website.

The Complainant is concerned that in creating the disputed domain name the Respondent has embodied the entirety of the ARCELORMITTAL mark and that it has been used to resolve to an inactive website with the obvious potential for improper use.

PARTIES CONTENTIONS

A. COMPLAINANT

The disputed domain name is confusingly similar to the ARCELORMITTAL Trademark in which the Complainant has rights. In creating the disputed domain name, the Respondent has embodied in it the entirety of the ARCELORMITTAL mark.

The Respondent has made an obvious misspelling of the trademark in the domain name, deleting the letter "l" where first appearing and replacing it with the letter "i", a characteristic typosquatting practice which gives the impression that the domain name is an official domain name of the Complainant. That misspelling does not negate a finding of confusing similarity.

The Respondent has no rights or legitimate interests in the disputed domain name. Initially, the Complainant has to make out a prima facie case on this issue and if it is made out, the Respondent must then establish that it has such a right or legitimate interest.

The Respondent has no rights or legitimate interests in respect of the disputed domain name as:

(a) the Respondent is not commonly known by the domain name, is not related to the Complainant or carry out any activity for, nor have any business with, the Respondent. Nor has the Complainant granted any licence or authorization to the Respondent to make any use of the Complainant's trademark or to register the domain name;

(b) the Respondent has engaged in typosquatting in constructing the disputed domain name; and

(c) the Respondent has caused the disputed domain name to resolve to an inactive website.

The Respondent has registered and used the disputed domain in bad faith. That is so because:

(a) the disputed domain name is confusingly similar to the ARCELORMITTAL trademark;

(b) the ARCELORMITTAL trademark had become famous by the time the Respondent registered the disputed domain name and thus the Respondent must have had actual knowledge of the Complainant and its trademark;

(c) the misspelling of the ARCELORMITTAL trademark in the disputed domain name was intentionally designed so that the disputed domain name would be confusingly similar to the trademark;

(d) the Respondent has caused the disputed domain name to resolve to an inactive website with the potential for subsequent improper use of the disputed domain name;

(e) the Respondent was attempting to pass itself off as the Complainant; and

(f) MX servers are configured to enable the disputed domain name to be used for e-mail purposes.

The Complainant has cited several prior UDRP decisions that it maintains support its submissions.

Thus, the Complainant submits that it can establish all of the elements required to be proved under the Policy and that it is therefore entitled to the relief that it seeks.

B. RESPONDENT

The Respondent did not file a Response in this proceeding.

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

DISCUSSION AND FINDINGS

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP") of the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the CAC Supplemental Rules.

A. Administrative compliance

By notification dated January 9, 2024, and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complaint did not provide the name of the Respondent (domain–name holder) and all information (including any postal and e-mail addresses and telephone and fax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the CAC to send the Complaint as described in Paragraph 2(a) [Rules, Paragraph 3(b)(v)]. The notification invited the Complainant to have regard to the Registrar's verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder. On January 9, 2024, the Complainant filed an Amended Complaint and the CAC determined also on January 9, 2024 that the Complaint should be admitted to proceed further in the Administrative Proceeding.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B. Substantive matters

Paragraph 15 of the Rules provides that the Panel is to decide the complaint 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.
In that regard, the Panel also notes that the onus is on the complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

(i) The 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 domain name; and
(iii) The domain name has been registered and is being used in bad faith.

The Panel will therefore deal with each of these requirements in turn.

Identical or Confusingly Similar

The Complainant has adduced evidence that the Panel accepts, namely Annex 2 to the Complaint, that the Complainant is the owner of the registered international trademark for ARCELORMITTAL, Registration No.947686 and registered on August 3, 2007 ("the ARCELORMITTAL trademark").

It will be seen therefore that the trademark was registered well before the disputed domain name was registered, which was on December 28, 2023. The Complainant has verified that the Respondent is the registrant of the disputed domain name.

The Panel next finds that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark for the following reasons.

First, the domain name includes the entirety of the ARCELORMITTAL trademark. Accordingly, it is clear that the domain name has

been inspired by and is an attempt to copy the ARCELORMITTAL trademark. It is also clear and has been held many times in prior UDRP decisions that when internet users see an entire trademark used in a domain name in this way, they will naturally conclude that the domain name is an official domain name of the trademark owner, in the present case the Complainant. Secondly, the Respondent has made an obvious misspelling of the trademark in the domain name, deleting the letter "l" where first appearing and replacing it with the letter "i", a characteristic typosquatting practice which gives the impression that the domain name is an official domain name of the Complainant. That misspelling does not negate a finding of confusing similarity but actually re-inforces it, as internet users would assume that the misspelling had been done by accident and that the domain name was a domain name of the Complainant or registered with its consent.

Internet users would also assume that the domain name was an official domain name of the Complainant and that it would lead to an official website of the Complainant, which is untrue.

Finally, the “dot.net” suffix is disregarded for the purposes of assessing confusing similarity, as it could not negate the clear impression that the domain name is confusingly similar to the trademark, which it is.

The Panel therefore finds that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark and that this conclusion is supported by the prior UDRP decisions cited by the Complainant.

The Complainant has thus made out the first of the three elements that it must establish.

Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:
(i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
(ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
(iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests and that when such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot or does not do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name.

That prima facie case is made out from the following considerations.

- The Complainant has clearly established its rights in the ARCELORMITTAL mark.
- The evidence of the Complainant is that the Respondent is not related in any way to the Complainant’s business, is not affiliated with the Complainant or authorized by it in any way to use the ARCELORMITTAL trademark and does not carry out any activity for, nor has any business with, the Complainant.
- The evidence shows that the Respondent is not commonly known by the domain name within the meaning of paragraph 4(c)(ii) of the Policy.
- The evidence is that no licence nor authorisation has been granted by the Complainant to the Respondent to make any use of its trademark or to register the disputed domain name.
- The evidence is that the disputed domain name resolves to an inactive website with potential for subsequent improper use.
- Thus, it can be inferred that the Respondent registered the disputed domain name for an improper motive, such as to try to sell it or use it dishonestly to make money or for some other illegitimate purpose.
- None of this conduct is bona fide or legitimate and none of it comes within any of the criteria for a right or legitimate interest in a domain name that are set out in paragraph 4(c) (i) – (iii) of the Policy. Nor is there any evidence to show that the Respondent could in any other way show a right or legitimate interest in the domain name.

These facts give rise to the prima facie case made out by the Complainant.

The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default. Accordingly, the prima facie case has not been rebutted and the Complainant has made out the second of the three elements that it must establish.

Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and

that it is being used in bad faith. Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive.

The four specified circumstances are:
(i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
(ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the site or location.

The evidence shows that the conduct of the Respondent in registering the domain name clearly amounts to bad faith registration and that its conduct since the registration, by using it to pass itself off as the Complainant and positioning the domain name to use it subsequently for an improper purpose, clearly amounts to bad faith use.

That is so for the following reasons.

First, the Panel has already found that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark and it must be inferred that this was done intentionally to create a confusingly similar domain name.

Secondly, the Respondent must have been aware of the existence of the Complainant and its prominent reputation when it registered the disputed domain name, because the Respondent chose the name of the domain name itself and then made an alteration to it by a minor misspelling, suggesting that it was an official domain name of the Complainant or that it had been registered with its consent, neither of which was true. Thus, the Respondent had actual knowledge of the Complainant and its trademark, which has long been a ground for finding bad faith registration and, by using the domain name it in the way that the Respondent has used it, its use of the domain name. The Panel therefore finds that the Respondent chose the Complainant's trademark, included it in the domain name and registered and used the domain name to invoke the Complainant for an improper purpose and therefore in bad faith.

Thirdly, the conduct of the Respondent brings the case within the provisions of paragraph 4(b)(i) of the Policy, as the most likely explanation for registering the domain name and using it was probably with the intention of selling it and forcing the Complainant to buy it.

Fourthly, the same considerations bring the case within the provisions of paragraph 4(b)(iii) of the Policy, because the intention and effect of registering and using the disputed domain name was to disrupt the Complainant's business.

Fifthly, the same conduct of the Respondent leads to the conclusion that the Respondent, in registering the domain name deceptively and without any authority to do so, must have intended to create a likelihood of confusion, with the intention of subsequently attracting current and potential customers of the Complainant looking for its services and doing so in this misleading manner. Thus, the matter comes within the provisions of paragraph 4(b)(iv) of the Policy.

Sixthly, MX servers have been configured to enable the domain name to be used for e-mail purposes. Thus, it must be inferred that the intention of the Respondent was to use the domain name later for an improper purpose, as there is no legitimate use to which the domain name could be put.

Seventhly, there is no conceivable ground for concluding that the Respondent was acting in good faith, as the Respondent was clearly targeting the Complainant.

Finally, in addition to the specific grounds of bad faith set out in the Policy and having regard to the totality of the evidence, the Panel finds that, in view of the Respondent's registration of the disputed domain name using the ARCELORMITTAL trademark and causing it to resolve to an inactive website, the Respondent has registered and used it in bad faith within the generally accepted meaning of that expression.

As the Complainant also rightly submits, such conduct of the Respondent has been held by many previous UDRP panels to constitute bad faith registration and use.

Accordingly, the Complainant has shown the third of the three elements that it must establish and is entitled to the relief that is seeks.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arceiormittal.net**: Transferred

PANELLISTS

Name	**Neil Brown**

DATE OF PANEL DECISION 2024-02-02

Publish the Decision