Decision for dispute CAC-UDRP-106144

Case number	CAC-UDRP-106144
Time of filing	2024-01-09 09:39:14
Domain names	XN--AOSARCEMITTAL-IGB.COM

Case administrator

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

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	IASMIN KELLY DA SILVA MACIEL TAVARES

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that are pending or decided and that relate to the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

Complainant states, and provides relevant evidence in support thereof, that it is the owner of Int'l Reg. No. 947,686 (registered on August 3, 2007) for the mark ARCELORMITTAL for use in connection with, inter alia, "common metals and their alloys" (the "ARCELORMITTAL Trademark").

FACTUAL BACKGROUND

Complainant states that it 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."

The Disputed Domain Name was created on January 6, 2024. Complainant states, and provides relevant evidence in support thereof, that the Disputed Domain Name is being used in connection with a website that "resolves to a copy of the Complainant's official website https://loja.arcelormittal.com.br/, displaying notably its trademark and logo," and that MX records are configured for the Disputed Domain Name.

PARTIES CONTENTIONS

Complainant contends, in relevant part, as follows:

Paragraph 4(a)(i): Complainant states that the Disputed Domain Name, which appears as <açosarcemittal.com>, is confusingly similar to the ARCELORMITTAL Trademark because "the deletion of the sequence 'LOR' in the trademark ARCELORMITTAL and the addition of the generic term 'ACOS' (signifying 'STEEL' in Portuguese)… does not change the overall impression of the designation as being connected to the Complainant's trademark."

Paragraph 4(a)(ii): Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "Respondent is not identified in the Whois database as the disputed domain name"; "Complainant does not carry out any activity for, nor has any business with the Respondent"; "[n]either license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ARCELORMITTAL, or apply for registration of the disputed domain name by the Complainant"; and "the disputed domain name points to a page copying the Complainant's official website."

Paragraph 4(a)(iii): Complainant states that the Disputed Domain Name was registered and is being used in bad faith because, inter alia, "Complainant's trademark ARCELORMITTAL is widely known"; "[g]iven the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark"; because "the contested domain name points to a page copying the Complainant's official website… the Respondent has intentionally attempted to attract, for commercial purposes, internet users to its website, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website"; and the configuration of MX records "suggests that… the disputed domain name may be actively used for email purposes."

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 UDRP).

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 UDRP).

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 UDRP).

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

Identical or Confusingly Similar: Paragraph 4(a)(i):

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the ARCELORMITTAL Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the ARCELORMITTAL Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (i.e., "xn--aosarcemittal-igb," or "açosarcemittal" as displayed) because "[t]he applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc') is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test." WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.11.1.

As set forth in section 1.7 of WIPO Overview 3.0, the test for confusing similarity "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" and "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."

Here, despite differences between the ARCELORMITTAL Trademark and the Disputed Domain Name, the ARCELORMITTAL Trademark is recognizable within the Disputed Domain Name.

Accordingly, the Panel finds that Complainant has proven the first element of the UDRP.

Rights or Legitimate Interests: Paragraph 4(a)(ii)

Complainant states that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, inter alia, "Respondent is not identified in the Whois database as the disputed domain name"; "Complainant does not carry out any activity for, nor has any business with the Respondent"; "[n]either license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ARCELORMITTAL, or apply for registration of the disputed domain name by the Complainant"; and "the disputed domain name points to a page copying the Complainant's official website."

WIPO Overview 3.0, section 2.1, states: "While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of 'proving a negative', requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 Panel finds that Complainant has established its prima facie case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the UDRP.

Registered and Used in Bad Faith: Paragraph 4(a)(iii)

Whether a domain name is registered and used in bad faith for purposes of the UDRP may be determined by evaluating four (non-exhaustive) factors set forth in paragraph 4(b) of the UDRP: (i) circumstances indicating that the registrant has registered or the registrant has 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 registrant's documented out-of-pocket costs directly related to the domain name; or (ii) the registrant 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 registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant's website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the registrant's website or location or of a product or service on the registrant's website or location.

As set forth in section 3.1.3 of WIPO Overview 3.0: "Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar… to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith." Here, it appears that the ARCELORMITTAL Trademark is widely known, as a previous panel wrote that it is "highly distinctive and well-established." ArcelorMittal (Société Anonyme) v. Robert Rudd, CAC Case No. 101667 (transfer of <arcelormittai.com>).

Further, by using the Disputed Domain Name in connection with a website that appears to be a website for Complainant, Respondent has obviously created a likelihood of confusion under paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that Complainant has proven the third element of the UDRP.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **XN--AOSARCEMITTAL-IGB.COM**: Transferred

PANELLISTS

Name	**Douglas Isenberg**

DATE OF PANEL DECISION 2024-02-06