Decision for dispute CAC-UDRP-106358

Case number	CAC-UDRP-106358
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Domain names	arceloxmeittatrades.com

Case administrator

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

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	ditec

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 international trademark n° 778212 ARCELOR® registered on February 25, 2002.

FACTUAL BACKGROUND

The 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 58.1 million ton crude steel made in 2023. The Complainant also owns an important domain names portfolio including the same distinctive wording ARCELOR, such as <arcelor.com> registered and used since August 29, 2001, <arcelormittaltrades.com> registered since July 6, 2022, and <arcelormeittertrades.com> registered since December 23, 2023. The disputed domain name in this proceeding is virtually identical to two of Complainant's domain names. It is both infringing the Complainant's trademark as well as committing a fraud against consumers.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it. It contends further that not only does the disputed domain name incorporate its trademark but it is virtually identical to one of its domain names. Respondent thus demonstrates in addition to infringing the Complainant's trademark a clear intent to deceive consumers that they are accessing a website sponsored by the Complainant. It states further that "[a] quick search on Google for ARCELOR would have revealed to the Respondent that all the results retrieved are strictly related to the Complainant and its trademark.").

RESPONDENT

The Respondent has not appeared.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the domain name; and

(iii) the respondent has registered and is using the domain name in bad faith.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: "respond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ..." Notwithstanding Respondent's default, however, Complainant is not relieved from the burden of establishing its claim. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, 3.0, § 4.3: "Noting the burden of proof on the complainant, a respondent's complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the default (i.e., failure to submit a formal response) would not by itself mean that the complainant's claims are true." However, if a complainant's adduced evidence supports any element of the Policy, a respondent has an opportunity to contest the contention that its registration of the challenged domain name was unlawful.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also Talk City, Inc. v. Robertson, D2000-0009 (WIPO February 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint."). Here, Respondent has not availed itself of contesting the evidence, and for the reasons further explained the disputed domain name shall be transferred to the Complainant's account.

1. Identical or confusingly similar, §4(a)(i).

This first limb of the Policy requires Complainant to prove that it has a trademark right and that the disputed domain name is identical or confusingly similar to that mark. The Panel finds that Complainant has demonstrated that it has a registered trademark right to the term ARCELOR. Having established that element of the Policy the next question is whether the disputed domain name is identical or confusingly similar to Complainant's mark. A side-by-side comparison of the disputed domain name and the ARCELOR trademark indicates that disputed domain name misspells Complainant's trademark by substituting the letter "x" for the letter "r" ("Arcelox" and ARCELOR) It also adds other words including a misspelling of MITTAL that further establishes confusing similarity to the mark. See Bloomberg Finance L.P. v. Nexperian Holding Limited, Claim No. FA 782013 (Forum June 4, 2018) (holding “relevant trademark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element.”

At the threshold it is necessary only to consider "whether a domain name is similar enough in light of the purpose of the Policy to justify moving on to the other elements of a claim for cancellation or transfer of a domain name." The Panel in Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party, D2000-1415 (WIPO January 23, 2001) notes that "numerous prior panels have held [the purposes of the Policy are satisfied] when a domain name wholly incorporates a complainant's registered mark." Similarly, Magnum Piering, Inc. v The Mudjackers and Garwood S. Wilson, Sr., D2000-1525 (WIPO January 21, 2001). Panelists generally disregard the top-level suffixes as functional necessities; thus, the top-level extension is irrelevant in determining the issue under the first requirement of the Policy.

Having demonstrated that the disputed domain name is confusingly similar to Complainant's ARCELOR trademark the Panel finds Complainant has satisfied Para. 4(a)(i) of the Policy.

2. Rights and legitimate interests, Para. 4(a)(ii)

Under paragraph 4(a)(ii) of the Policy, a complainant has the burden of establishing that a respondent lacks rights or legitimate interests in respect of the disputed domain name, but this burden is light. It is sufficient in the first instance for Complainant to allege a prima facie case, and if the evidence presented is conclusive or yields a positive inference that Respondent lacks rights or legitimate interests, the burden shifts to Respondent to rebut the allegations. This concept of shifting burdens is clearly explained in Croatia Airlines d.d. v. Modern Empire Internet Ltd., Case Number D2003-0455 in which the Panel held that "[s]ince it is difficult to prove a negative ... especially where the Respondent, rather than complainant, would be best placed to have specific knowledge of such rights or interests—and since Paragraph 4(c) describes how a Respondent can demonstrate rights and legitimate interests, a Complainant's burden of proof on this element is light."

Once the complainant makes such prima facie showing, "the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with evidence rebutting the prima facie case or showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP," Malayan Banking Berhad v. Beauty, Success & Truth International, Case No. D2008-1393. Finally, "in the absence of direct evidence, complainant and the panel must resort to reasonable inferences from whatever evidence is in the record," Euromarket Designs, Inc. v. Domain For Sale VMI, Case No. D2000-1195.

In this case, Complainant contends that Respondent has no rights or legitimate interests in the disputed domain name in that it has not granted Respondent permission to use the ARCELOR trademark, and without authorization the Respondent is using the disputed domain name to mislead consumers into believing that the website is sponsored by the Complainant. Thus, the Complainant has adduced a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Once the burden shifts, Respondent has the opportunity of demonstrating its right or legitimate interest by showing the existence of any of the following nonexclusive circumstances:

(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.

If a respondent proves any of these circumstances or indeed anything else that shows it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the respondent must succeed. However, where respondent fails to respond, the Panel must assess the record before it.

Here, the choice of the domain name is confusingly similar to the trademark. The Complainant alleges that it has not authorized the Respondent to register the disputed domain name nor does it have any business relationship with the Respondent that would support a defense under para. 4(c)(i) of the Policy. Further, the evidence in the record is conclusive that Respondent Deborah Goodrichis not commonly known under the disputed domain name. See Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group, Case Number FA1804001781783 ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy 114(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy para. 4(c)(ii)"); Amazon Technologies, Inc. v. Suzen Khan / Nancy Jain / Andrew Stanzy, Case Number FA 1741129 (finding that respondent had no rights or legitimate interests in the disputed domain names when the identifying information provided by WHOIS was unrelated to the domain names or respondent's use of the same).

Finally, the disputed domain name resolves to a website crafted to mislead consumers to perpetrate a fraud by impersonating the Complainant. As the evidence establishes fraudulent use of the disputed domain name there can be no defense of that it was registered for any “noncommercial or fair use” (para. 4(c)(iii) of the Policy).

Since there is no proof otherwise, the record supports the conclusion that Respondent lacks any right or legitimate interest as measured by the three circumstances of paragraph 4(c). See Deutsche Telekom AG v. Britt Cordon, Case No. D2004 -0487 (holding that "once a complainant establishes a prima facie case that none of the three circumstances establishing legitimate interests or rights applies, the burden of production on this factor shifts to the Respondent. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP"). Similarly in Malayan Banking Berhad, supra. (holding that "[i]f the respondent fails to come forward with evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.").

Accordingly, as the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name, Complainant has satisfied Paragraph §4(a)(ii) of the Policy.

3. **Registered and Used in Bad Faith, §4(a)(iii)**

Having determined that Respondent lacks rights or legitimate interests, the Complainant must then 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. The consensus expressed in WIPO Overview 3.0, section 3.1.4. is 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, the disputed domain name not only appropriates the Complainant's trademark but it also replicates Complainant's domain name <arcelormittaltrades.com> albeit with purposeful typographic inaccuracies of the mark and the Complainant's business name, <arceloxmeittatrades.com>. Thus, Respondent demonstrates that it had the Complainant and its trademark in mind when registering the disputed domain name. Absent a cogent explanation from Respondent justifying its choice of domain name which is not forthcoming in this proceeding, this supports the conclusion that it registered the disputed domain name with the purpose of taking advantage of its goodwill and reputation and committing fraud on consumers and Complainant's clients.

Paragraph 4(b) of the Policy sets out four nonexclusive 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.

Of the four circumstances, the fourth most readily applies as the disputed domain name is clearly intended to attract Internet users seeking to reach Complainant's website and creating a "likelihood of confusion with the complainant's mark." Where the facts demonstrate an intent to capitalize on an owner's mark in the manner in which Complainant describes and which is supported by proof in the record, the registration is prima facie abusive. Royal Bank of Canada - Banque Royale Du Canada v. Registration Private, Domains By Proxy, LLC / Randy Cass, Case No. D2019-2803 (<investease.com>. "It is clear that where the facts of the case establish that the respondent's intent in registering or acquiring a domain name was to unfairly capitalize on the complainant's nascent .. . trademark, panels have been prepared to find the respondent acted in bad faith.). See WIPO Overview 3.0, section 3.8.2. The Panel finds that the Complainant has shown that the Respondent registered and is using the disputed domain name in bad faith both in general and in particular because the Respondent's conduct puts the case squarely within paragraph 4(b)(iv) as well as within the larger notion of abusive conduct. The Panel finds that Complainant has adduced more than sufficient evidence to prove Respondent's bad faith based on the foregoing considerations.

Accordingly, the Panel finds that Respondent has registered and used the disputed domain name in bad faith and that its conduct firmly supports the conclusion that the registration of <arcelromiittal.com.com> was abusive. Having thus demonstrated that Respondent registered and is using the disputed domain name in bad faith, Complainant has also satisfied paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arceloxmeittatrades.com**: Transferred

PANELLISTS

Name	**Gerald Levine Ph.D, Esq.**

DATE OF PANEL DECISION 2024-04-15

Publish the Decision