Decision for dispute CAC-UDRP-106546

Case number	CAC-UDRP-106546
Time of filing	2024-05-17 12:25:13
Domain names	arcelrornittal.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Eloise Madden

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 portfolio, including international trademark no. 947686 ARCELORMITTAL, registered on August 3, 2007 for goods and services in classes 06, 07, 09, 12, 19, 21, 39, 40, 41, 42 of the International Classification of Goods and Services.

FACTUAL BACKGROUND

The Complainant is a world company specialized in steel producing and is the market leader in steel for use in automotive, construction, household appliances and packaging with 58.1 million tons crude steel made in 2023.

The Complainant also owns an important domain names portfolio, such as the domain name <arcelormittal.com>, registered on January 27, 2006.

The disputed domain name was registered on May 15, 2024, and resolves to a parking page with commercial links. Besides, MX servers are configured.

PARTIES CONTENTIONS

1. Complainant

The Complainant asserts that each of the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. In particular, the Complainant asserts that:

(1) the disputed domain name is confusingly similar to its ARCELORMITTAL trademark in which the Complainant has rights. The obvious misspelling of the Complainant's trademark ARCELORMITTAL (i.e. the reversal of the letters "O" and "R" and the substitution of the letter "M" by the visually similar letters "RN") is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. The addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark;

(2) the Respondent has no rights or legitimate interests in respect of the disputed domain name, and it is not related in any way with the Complainant. The Respondent is not identified in the Whois database as the disputed domain name and is not known as the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither 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. Moreover, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark ARCELORMITTAL. The disputed domain name redirects to a parking page with commercial links, which should not be considered a bona fide offering of goods or services, nor as legitimate non-commercial or fair use;

(3) the disputed domain name was registered and is being used in bad faith. The Complainant's trademark ARCELORMITTAL is widely known. The Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The misspelling of the trademark ARCELORMITTAL was intentionally designed to be confusingly similar with the Complainant's trademark. Furthermore, the disputed domain name points to a parking page with commercial links. The Respondent has attempted to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith. The Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law. Finally, the disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes.

2. Respondent

The Respondent did not reply to the Complainant's contentions.

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

To succeed, the Complainant must demonstrate that all the elements listed in paragraph 4(a) of the Policy have been satisfied, as following:

- the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complaint.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") and, where appropriate, will decide consistent with the consensus views captured therein.

1. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Panel confirms that for the purposes of paragraph 4(a)(i) of the Policy, the Complainant has satisfied the threshold requirement of having relevant trademark rights for ARCELORMITTAL in jurisdictions throughout the world.

With the Complainant's rights in ARCELORMITTAL trademark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to the Complainant's mark.

It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a "reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". WIPO Overview 3.0, section 1.7. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The disputed domain name contains the name "arcelormittal" almost in its entirety. The obvious misspelling of the Complainant's trademark ARCELORMITTAL (i.e. the reversal of the letters "O" and "R" and the substitution of the letter "M" by the visually similar letters "RN") is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

Prior UDRP panels have recognized that confusing similarity is established for purposes of the Policy where the disputed domain name incorporates the complainant's trademark in its entirety. See WIPO Overview 3.0, section 1.7. Furthermore, the Panel considers that this is a clear case of typosquatting since the disputed domain name is a slight misspelling of the Complainant's registered trademark (see Section 1.9 of the WIPO Overview 3.0).

Furthermore, the Panel considers that the misspelling of the Complainant's trademark within the disputed domain name <arcelrornittal.com> cannot prevent a finding a confusing similarity (WIPO Overview 3.0 at section 1.9).

The generic Top-Level Domain ("gTLD") ".com" may be disregarded for purposes of comparison under the first element, as they are viewed as a standard registration requirement. See WIPO Overview 3.0, section 1.11.1.

For all of the above-mentioned reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark and therefore finds that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

2. 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.

As established by previous UDRP panels, it is sufficient for the Complainant to make a prima facie case demonstrating that the Respondent has no rights or legitimate interests in the disputed domain name in order to place the burden of production on the Respondent (see section 2.1 of the WIPO Overview 3.0).

In the present case, the Complainant has established a prima facie case that the Respondent has no legitimate reason to register and use the disputed domain name.

The evidence in the case file shows that the Respondent is not identified in the Whois database as the disputed domain name and not commonly known by the disputed domain name.

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii)

of the Policy.

Moreover, given that the disputed domain name consists of a misspelling of the Complainant's trademark, the Panel struggles to conceive any legitimate interests of the Respondent in the disputed domain name. Under such circumstances, any potential use of the disputed domain name by the Respondent only increases the possibility of the Internet users to falsely attribute the disputed domain name to the activities of the Complainant.

The present submission also does not contain any evidence that the Respondent has been commonly known by the disputed domain name as an individual, business, or other organization.

The disputed domain name resolves to a parked webpage. According to this Panel, the Complainant also proved that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name nor is it using the disputed domain name in connection with a bona fide offering of goods or services, so as to confer a right or legitimate interest in it in accordance with paragraph 4(c)(i) of the Policy.

Accordingly, the Panel finds that the Complainant has made a prima facie case that has not been rebutted by the Respondent. Once the Complainant makes a prima facie case, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name.

The Respondent did not reply to the Complainant's contentions, claiming any rights or legitimate interests in the disputed domain name. With the evidence on file, the Panel finds that the requirement of paragraph 4(a)(ii) of the Policy is satisfied and that it is undoubtedly established that the Respondent has no rights or legitimate interests in respect to the disputed domain name.

3. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, 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.

The Complainant's trademark ARCELORMITTAL significantly predates the registration date of the disputed domain name. In addition, the Complainant enjoys a long-lasting worldwide reputation, which has also been established by several previous panels for years. See CAC Case No. 101908, ARCELORMITTAL v. China Capital; CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd. Therefore, under this Panel's view, the Respondent's choice of the disputed domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks.

Equally, registering the disputed domain name which is confusingly similar to the Complainant's trademark ARCELORMITTAL, since the misspelling of the trademark ARCELORMITTAL was intentionally designed to be confusingly similar with the Complainant's trademark, which in itself evidence of bad faith. See section 3.1.4 of the WIPO Overview 3.0.

In light of these particular circumstances, the Panel concludes that the Complainant has succeeded in proving the requirement of paragraph 4(a)(iii) that the disputed domain name was registered in bad faith by the Respondent.

Furthermore, the disputed domain name points to a parking page with commercial links. The Panel considers the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith. Section 3.3 of the WIPO Overview 3.0 describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: "While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent 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), and (iv) the implausibility of any good faith use to which the domain name may be put".

Finally, the disputed domain name has been set up with MX records, which suggests that it may be actively used for email purposes. Please see similar case CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono.

The Respondent has provided no evidence of actual or contemplated good-faith use of the disputed domain name and, under the circumstance of this case, the Panel does not find any such use plausible.

In light of the above, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith and that the Complainant has established its case under 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. **arcelrornittal.com**: Transferred

PANELLISTS

Name	**Ganna Prokhorova**

DATE OF PANEL DECISION 2024-06-25

Publish the Decision