Decision for dispute CAC-UDRP-106640

Case number	CAC-UDRP-106640
Time of filing	2024-06-24 11:27:21
Domain names	arcelomittal.online

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	Admin User

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 has demonstrated ownership of rights in the trademark ARCELORMITTAL for the purposes of standing to file a UDRP complaint.

In particular, the Complainant is the owner of trademark registrations for ARCELORMITTAL including International trademark registration No. 947686 for ARCELORMITTAL (word mark), registered on August 3, 2007, duly renewed and covering goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

The Complainant also refers to ownership over the domain name <arcelormittal.com> that incorporates its ARCELORMITTAL trademark, and which is registered since January 27, 2006.

FACTUAL BACKGROUND

The Complainant is the steel producing company and, according to the Complainant, it 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 disputed domain name was registered on June 20, 2024 and it resolves to a parking page with sponsored links (pay-per-click links or PPC). MX records have also been configured on the disputed domain name.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it. In particular, the Complainant argues that the disputed domain name is confusingly similar to its ARCELORMITTAL trademark as it represents the obvious misspelling of this trademark (with the omission of letter "R") in combination with ".online" TLD which should not be taken into account when assessing confusing similarity.

Regarding the second UDRP element, the Complainant asserts that 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 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, or apply for registration of the disputed domain name by the Complainant. The Complainant also claims that the disputed domain name is a typosquatted version of the trademark ARCELORMITTAL and that typosquatting can evidence that a respondent lacks rights and legitimate interests in the domain name. Finally, the Complainant underlines that use of the disputed domain name for a parking page with commercial links is not a bona fide offering of goods or services, nor a non-commercial or fair use.

With respect to the third UDRP element, the Complainant holds that its ARCELORMITTAL trademark is well-known and that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The Complainant states the misspelling of the trademark ARCELORMITTAL was intentionally designed to be confusingly similar with the Complainant's trademark. Further, the disputed domain name points to a parking page with commercial links and the Complainant contends that 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 evidence of bad faith. Finally, the Complainant indicates that MX records are configured on the disputed domain name which suggests that it may be actively used for e-mail 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 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

According to paragraph 15(a) of the Rules: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy stipulates that the complainant must prove each of the following:

1. that the disputed domain name registered by the respondent is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
2. that the respondent has no rights or legitimate interests in respect of the disputed domain name; and

3. that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name, as stipulated in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("WIPO Overview 3.0").

The Complainant has shown rights in respect of the ARCELORMITTAL trademark for the purposes of the Policy (WIPO Overview 3.0, section 1.2.1).

The second-level domain (SLD) of the disputed domain name "arcelomittal" is very close to the ARCELORMITTAL trademark and the only difference is lack of second letter "r" in the disputed domain name. The omission of the second letter "r" in the disputed domain name is insufficient to avoid a finding of confusing similarity. A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (WIPO Overview 3.0, section 1.9).

Previous UDRP panels have consistently held that the applicable Top Level Domain ("TLD") in a domain name (eg, ".com", ".club", ".nyc" or ".online" in this case) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test (WIPO Overview 3.0, section 1.11.1).

In accordance with the above, the Panel finds that the first element of the Policy has been established and that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

In particular, the Panel notes that there appears to be no relationship between the Respondent and the Complainant and that the Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's ARCELORMITTAL trademark. There appears to be no element from which the Panel could infer the Respondent's rights and legitimate interests in the disputed domain name, or that the Respondent might be commonly known by the disputed domain name.

The Panel also finds that the use of the disputed domain name for a parking page with pay-per-click links does not represent a bona fide offering having in mind that links in this case are related to steel and metal production and therefore they compete with and capitalize on the reputation and goodwill of the Complainant's trademark and mislead Internet users (see WIPO Overview 3.0, section 2.9).

Having in mind the above, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith (see WIPO Overview 3.0, section 3.2.1).

Regarding the registration of the disputed domain name in bad faith, the Panel holds that the Respondent had the Complainant in mind when registering the disputed domain name. The Complainant's ARCELORMITTAL trademark has been registered and used long before the Respondent registered the disputed domain name, so it is unlikely that the Respondent was not aware of this trademark, especially having in mind its distinctiveness and reputation. The fact that the Respondent has chosen the domain name that differs from ARCELORMITTAL trademark only in omission of single letter further indicates that the Respondent intentionally

selected the domain name that is confusingly similar to the Complainant's trademark. Misspelling of trademark (the practice known as typosquatting) that enjoys certain reputation has been commonly recognized as evidence of bad faith by prior panels (see WIPO Overview 3.0, section 3.1.4).

Due to the above, the Panel finds that the disputed domain name has been registered in bad faith.

As mentioned above, the disputed domain name resolves to a parking page with PPC links related to steel and metal production, meaning that they compete with and capitalize on the reputation and goodwill of the Complainant's trademark. Therefore, the Panel deems that by such use of the disputed domain name, the Respondent has intentionally attempted to attract Internet users to its website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy. This constitutes bad faith use of the disputed domain name.

The Panel also considers that configuration of mail exchange records (MX records) on the disputed domain name can also contribute to the Respondent's bad faith. Previous panels have held that mere configuration of such records can represent a severe risk of phishing or other fraudulent and abusive activities (see, for example, Carrefour v. WhoisGuard, Inc., WhoisGuard Protected / Robert Jurek, Katrin Kafut, Purchasing clerk, Starship Tapes & Records, WIPO Case No. D2017-2533, Accenture Global Services Limited v. WhoisGuard Protected, WhoisGuard, Inc. / Basikta James, WIPO Case No. D2020-2955 and JCDECAUX SA v. Handi Hariyono, CAC Case No. CAC-UDRP-102827). In a situation where a disputed domain name is confusingly similar to a third-party trademark that enjoys certain reputation, it is indeed, rather difficult to imagine any good faith use of the mail server attached to such a domain name.

The Panel finds that the disputed domain name has been both registered and is being used in bad faith, and consequently that the Complainant has established the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arcelomittal.online**: Transferred

PANELLISTS

Name	**Stefan Bojovic**

DATE OF PANEL DECISION 2024-07-25

Publish the Decision