Decision for dispute CAC-UDRP-106700

Case number	CAC-UDRP-106700
Time of filing	2024-07-16 10:02:45
Domain names	acrelormittal.net

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	a b

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 registrant of the international trademark registration No. 947686, “ARCELORMITTAL”, registered on August 3, 2007, for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42.

The disputed domain name was registered by the Respondent on July 12, 2024.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant states that it is the largest steel company in the world and that it is the market leader in steel for use in automotive, construction, household appliances and packaging.

The Complainant adds that it holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant points out that it is the owner of the international trademark "ARCELORMITTAL", registered before the registration of the disputed domain name.

The Complainant submits that it owns an important domain names portfolio, including the domain name <arcelormittal.com> registered since January 27, 2006.

The Complainant considers that the disputed domain name is confusingly similar to its trademark "ARCELORMITTAL".

The Complainant notes that the disputed domain name is a mispelling of its trademark "ARCELORMITTAL".

The Complainant contends that the addition of the top-level domain ".NET" does not change the overall impression of the designation as being connected to the Complainant's trademark.

The Complainant adds 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 asserts that the Respondent is not known as the disputed domain name.

The Complainant clarifies that it does not carry out any activity for, nor has any business with the Respondent.

The Complainant underlines that 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.

The Complainant observes that the disputed domain name is a typosquatted version of its trademark "ARCELORMITTAL".

The Complainant notes that the disputed domain name redirects to a parking page with commercial links.

Therefore, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name.

The Complainant observes that past panels have confirmed the notoriety of the widely known trademark "ARCELORMITTAL".

The Complainant points out that, given the distinctiveness of the Complainant's trademarks and the Complainant's reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. The Complainant argues that the misspelling of its trademark "ARCELORMITTAL" is intentional and is an indication of bad faith.

The Complainant adds that, given that 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. The Complainant considers that this is evidence of bad faith.

The Complainant notes that the disputed domain name has been set up with MX records, which suggests that it may be actively used for e-mail purposes. The Complainant argues that this may be considered as evidence of bad faith registration and use because any e-mail sent using the disputed domain name could not be used for any good faith purpose.

Therefore, the Complainant considers that the Respondent has registered the disputed domain name and is using it in bad faith.

PARTIES CONTENTIONS

The Complainant, relying on the arguments summarised above, contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
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

In accordance with paragraph 4(a) of the Policy, in order to obtain the transfer of the disputed domain name, the Complainant has to demonstrate that:

(i) The disputed 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 disputed domain name; and

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

IDENTICAL OR CONFUSINGLY SIMILAR

The first requirement that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to the Complainant’s trademark or service mark rights.

There are two elements of this test: the Complainant must demonstrate that it has rights in a trademark or service mark and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark or service mark.

The Complainant has proven ownership of the registered trademark "ARCELORMITTAL", identified in section “Identification of rights” above.

On the question of identity or confusing similarity, what is required is simply a comparison and assessment of the disputed domain name itself to the Complainant’s trademark.

The disputed domain name differs from the Complainant’s trademark "ARCELORMITTAL" only by the inversion of the letters "R" and "C" (second and third letters of the trademark), and of the top-level domain ".NET".

It is well established that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name (for example WIPO Case No D2016-2545).

In the present case, the Panel considers that the disputed domain name is confusingly similar to the Complainant's "ARCELORMITTAL" trademark for the following reasons: (a) "ARCELORMITTAL" is a distinctive trademark; (b) the only difference between the "ARCELORMITTAL" trademark and the disputed domain name is that in the latter the second and the third letters have been inversed; (c) the fact of inverting the above-mentioned letters in the disputed domain name does not create any new word, or give the disputed domain name any distinctive meaning; (d) the disputed domain name is a deliberate misspelling of the Complainant's "ARCELORMITTAL" trademark; and (e) visually the disputed domain name is so close to the Complainant's well-known "ARCELORMITTAL" trademark that confusion is inevitable between them.

It is also well established that the top-level domain may generally be disregarded in the confusing similarity test (see, for example, WIPO case No. D2016-2547).

Therefore, the Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark "ARCELORMITTAL".

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

RIGHTS OR LEGITIMATE INTERESTS

The second requirement that the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the respondent has rights or legitimate interests in a domain name:

(i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the Respondent] [has] acquired no trademark or service mark rights; or

(iii) [the Respondent] [is] making a legitimate non-commercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

This is a non-exhaustive list of circumstances in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement falls on the Complainant. UDRP panels have recognized that proving that a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of "proving a negative".

Accordingly, it is usually sufficient for a complainant to raise a prima facie case against the respondent and the burden of proof on this requirement shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in a domain name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent does not have rights or legitimate interests in the disputed domain name.

In particular, the Complainant states that:

- the Respondent is not identified in the Whois database as the disputed domain name;

- the Respondent 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;

- the disputed domain name is a typosquatted version of the trademark "ARCELORMITTAL";

- the disputed domain name points to a parking page with commercial links.

In the absence of a Response, there is no indication in the present case that the Respondent is commonly known by the disputed domain name.

Furthermore, the Respondent has failed to demonstrate any of the other non-exclusive circumstances evidencing rights or legitimate interests under paragraph 4(c) of the Policy or other evidence of rights or legitimate interests in the disputed domain name.

The Respondent does not appear to make any legitimate non-commercial or fair use of the disputed domain name, nor any use in connection with a bona fide offering of goods or services. Indeed, the disputed domain name redirects users to a parking page with commercial links.

Taking into account that the Respondent is not known as the disputed domain name, that the Complainant does not carry out any activity for, nor has any business with the Respondent, that the Complainant has not authorized or licensed the Respondent to use

the disputed domain name or to apply for registration of it, that the disputed domain name redirects users to a parking page with commercial links and that the disputed domain name is a typosquatted version of the trademark "ARCELORMITTAL", the Panel cannot imagine any possible legitimate justification for this use, and the Respondent has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

BAD FAITH

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent.

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, including:

(i) circumstances indicating that [the Respondent] [has] registered or [has] acquired the [disputed] domain name primarily for the purpose of selling, renting, or otherwise transferring the [disputed] 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 [disputed] domain name; or

(ii) [the Respondent] [has] registered the [disputed] 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 [disputed] domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the [disputed] domain name, [the Respondent] [has] intentionally attempted to attract, for commercial gain, Internet users to [the Respondent's] web site 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] web site or location or of a product or service on [the Respondent's] web site or location.

The Panel, on the basis of the evidence presented, agrees with the Complainant's contentions that the disputed domain name was registered in bad faith and that it has been used in bad faith.

The Panel observes that it is well established that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative. Therefore, even where a complainant is not able to demonstrate the literal application of one of the above-mentioned scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behaviour detrimental to the complainant’s trademark would also satisfy the complainant’s burden.

Indeed, taking into account the distinctiveness and reputation of the trademark "ARCELORMITTAL", which long predated the disputed domain name, it is inconceivable that the Respondent was not aware of the Complainant's rights in the trademark "ARCELORMITTAL" when registering the disputed domain name. The Respondent should have performed an internet search, aimed at excluding possible conflicts with third party rights. Therefore, the Respondent has failed to carry out such a search and has to be considered responsible for the resulting abusive registration under the concept of wilful blindness (see, for example, WIPO Case No. D2018-1182). Consequently, this circumstance is considered by the Panel as evidence of bad faith.

As regards the fact that the disputed domain name points to a parking page with commercial links, the Panel, in line with the views of other panels (see, for example, CAC Case No. 105717), in the present circumstances agrees that, on the balance of probabilities, it is sufficiently shown that the Respondent has registered and has been using the disputed domain name to attract Internet users for commercial gain.

Moreover, other panels considered that the risk that a domain name is used for the sending and receiving of phishing e-mails may exist where a domain name that is confusingly similar to the Complainant’s well-known trademark has been created by the Respondent, and in the absence of the Respondent's explanation as regards the creation of the MX record (see CAC Case No. 104862). The Panel agrees with this view and considers that, in the present circumstances, the existence of a MX record for the disputed domain name supports a finding of bad faith.

Furthermore, other panels considered typosquatting as evidence of bad faith (see, for example, WIPO Case No. D2004-1039). The Panel shares this view.

The Panel observes that if the Respondent had legitimate purposes in registering and using the disputed domain name it would have filed a response in this proceeding.

The Panel, having taken into account the Respondent's knowledge of the "ARCELORMITTAL" trademark at the time of the disputed domain name’s registration, the fact that the disputed domain name is a typosquatted version of the "ARCELORMITTAL" trademark and is used in a parking page with commercial links, that no response to the complaint has been filed, and the creation of the MX record, considers that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **acrelormittal.net**: Transferred

PANELLISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2024-08-09

Publish the Decision