Decision for dispute CAC-UDRP-106676

Case number	CAC-UDRP-106676
Time of filing	2024-07-08 13:15:22
Domain names	arcelornnittall.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Florenza Marbleser

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 No. 947686 “ArcelorMittal" (word) registered from August 3, 2007 at the date of filing of the Complaint internationally registered inter alia in the European Union and the United States.

FACTUAL BACKGROUND

The Complainant is a world’s leading steel company with over 58 million of tons of crude steel made in 2023.

The Complainant owns inter alia the domain name <arcelormittal.com> registered since January 27, 2006.

The disputed domain name was registered by the Respondent on July 3, 2024, and resolved to an index website.

PARTIES CONTENTIONS

1. **Complainant**

The Complainant claims that the disputed domain name is confusingly similar to its trademark ArcelorMittal. The Complainant alleges that the apparent misspelling of the Complainant's trademark ArcelorMittal, namely the substitution of the letter "M" for the letters "NN" and the addition of the letter "L", is characteristic of a typosquatting practice intended to create a confusing similarity between the Complainant's trademark and the disputed domain name.

The Complainant further alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

Specifically, Complainant alleges that (i) Respondent is not identified in the Whois database by the disputed domain name but as "Florenza Marbleser" and is in no way related to Complainant, (ii) Complainant does not perform any activity for, nor has any business with, Respondent, (iii) that the disputed domain name is a typo-squatted version of the ArcelorMittal trademark, and (iv) that the disputed domain name resolves to an index page and that the Respondent has not made any use of the disputed domain name.

The Complainant alleges that the Respondent has registered and is using the disputed domain name in bad faith. The Complainant asserts that the ArcelorMittal trademark is widely known, including in the United States, where it is also registered. The Complainant also notes that the reputation of the ArcelorMittal trademark has been confirmed, inter alia, in previous CAC cases No. 101908 and No. 101667.

The Complainant alleges that, given the distinctiveness of the Complainant's mark and its reputation, it is reasonable to infer that the Respondent registered the domain name with full knowledge of the Complainant's mark.

Furthermore, the Complainant alleges that (i) the misspelling of the mark ArcelorMittal is intentionally designed to be confusingly similar to the Complainant's mark, (ii) the Respondent has not demonstrated any activity with respect to 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 unlawful. The inclusion of a famous mark in a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

Finally, the Complainant alleges that the disputed domain name has been set up with MX records indicating that it may be actively used for email purposes. These actions are evidence of bad faith.

2. **Respondent**

No administratively compliant response has been submitted by the Respondent.

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).

The Complainant has successfully demonstrated that it is the rightful owner of the word mark "ArcelorMittal", which is legally protected in numerous countries, including the United States, where the Respondent is based. The Panel recognises that the Complainant's ArcelorMittal trademark is clearly identifiable in the disputed domain name and agrees with the Complainant that the mere replacement of the letter "M" with the letters "NN" and the addition of the letter "L", which the Panel considers to be an obvious and intentional misspelling, are not sufficient to prevent the likelihood of confusion with the Complainant's trademark.

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).

A complainant is required to establish a prima facie case that the respondent lacks rights or legitimate interests. Once such a case is made, the burden of proof shifts to the respondent to demonstrate their rights or legitimate interests in the disputed domain name. Failure to do so results in the complainant satisfying paragraph 4(a)(ii) of the Policy (as per Article 2.1 of WIPO Jurisprudential Overview 3.0 and WIPO Case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

Based on the contentions of the Complainant, the panel finds that the Complainant has successfully established a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

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).

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark (see Article 3.1. of WIPO Jurisprudential Overview 3.0).

Registration in bad faith

The Panel will consider the following factors in determining bad faith registration of the disputed domain name:

(a) The reputation of the Complainant and its ArcelorMittal mark, as confirmed by prior CAC decisions;

(b) The inherent distinctiveness of the Complainant's trademark;

(c) The disputed domain name contains obvious and intentional misspellings of the Complainant's trademark, which amounts to typo-squatting.

Based on the foregoing, the Panel concludes that the Respondent given Complainant´s reputation must have been aware of the Complainant and its trademark when it registered the disputed domain name.

The Panel concludes that by registering a domain name that is very similar to the older trademark and to an already commercially established domain name/website, except for obvious misspellings, the Respondent has attempted to unfairly exploit the distinctiveness of the ArcelorMittal trademark and website/domain name.

Therefore, the Panel finds that the Respondent registered the disputed domain name in bad faith.

Use in bad faith

Although there are currently no active web pages associated with the disputed domain name, this does not preclude a finding of bad faith under passive holding doctrine. The following 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 (See Article 3.3 of the WIPO Jurisprudence Overview 3.0).

In the circumstances of this case, the Panel finds that the Complainant's trademark ArcelorMittal, which is also the distinctive element of the Complainant's company name, has a high degree of inherent distinctiveness and reputation. Furthermore, the Panel notes that the Respondent has not provided any response or evidence of actual or intended use in good faith. In addition, Mail Exchange ("MX") records have been activated for the disputed domain name. An MX record is a resource record in the Domain Name System that specifies which email server is responsible for accepting email on behalf of a domain name. It is not necessary to assign MX records to a domain name if the registrant does not intend to use the domain name to send and receive email. Activating the MX records to designate an email server and enable email is an action that goes beyond the mere registration of the disputed domain name and may constitute bad faith use (see, for example, WIPO Panel decision CKM Holdings Inc. v. Grant Chonko, Genesis Biosciences Case No. D2022-0479).

Therefore, the Panel is satisfied that the totality of the circumstances of this case supports a finding that the Respondent's use of the domain name is in bad faith.

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

The Panel has determined that the disputed domain name is confusingly similar to the Complainant's trademarks, and the wording of the disputed domain name indicates typosquatting.

Based on the contentions presented by the Complainant, the Panel has found that the Complainant has satisfactorily made a prima facie case that the Respondent lacks rights or legitimate interests. As the Respondent has failed to provide relevant evidence demonstrating any such rights or legitimate interests, the Complainant is deemed to have satisfied the second element.

The Panel finds that, based on the Complainant's contentions and evidence, it can be concluded that the Respondent must have been aware of the Complainant's trademarks when it registered the disputed domain name, and as such, the Respondent has registered the disputed domain name in bad faith.

Lastly, the Panel has concluded that the Complainant has successfully proven that the disputed domain name is being used in bad faith.

Therefore, for the aforementioned reasons, the Panel orders that the disputed domain name < arcelornnittall.com> be transferred to

the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **arcelornnittall.com**: Transferred

PANELLISTS

Name	**Karel Šindelka**

DATE OF PANEL DECISION 2024-08-13

Publish the Decision