Decision for dispute CAC-UDRP-106836

Case number	CAC-UDRP-106836
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Domain names	arcelorminttal.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Organization	toptech

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”, registered on August 3, 2007 in classes of 6, 7, 9, 12, 19, 21, 39, 40, 41, 42 in various jurisdictions, including European Union, Australia, USA and other countries. The trademark was duly renewed with expiry date of August 3, 2027.

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

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

The Complainant 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 tons crude steel made in 2023. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

B. Respondent's Factual Allegations

The Respondent has defaulted in this UDRP administrative proceedings and has consequently made no factual allegations.

The Respondent is toptech (sky wagon) based at the address of 1124 Florida Central Pkwy, Longwood, FL, Post Code 32750, United States.

The disputed domain name was registered on August 30, 2024 by the Respondent, as confirmed by the Registrar.

As at the time of filing of the Complaint, the disputed domain name resolved to an inactive page.

PARTIES CONTENTIONS

A. COMPLAINANT

The Complainant's contentions can be summarized as follows:

I. The disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights

The Complainant states that the disputed domain name <arcelorminttal.com> is confusingly similar to its trademark "ArcelorMittal"and its domain name associated as it is identically contained. The obvious misspelling of the Complainant's trademark (i.e. the addition of the letter "N") is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he 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.

Moreover, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark. Besides, the disputed domain name resolves to an inactive page.

III. The Respondent registered and is using the disputed domain name in bad faith

The Complainant contends that its trademark "ArcelorMittal" is widely known. Given the distinctiveness of its trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Moreover, the Complainant states the misspelling of the trademark was intentionally designed to be confusingly similar with the Complainant's trademark.

The disputed domain name resolves to an inactive page. 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 domain name by the Respondent. As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

Finally, the disputed domain name has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

B. RESPONDEENT

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

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the Complainant shall prove the following three elements:

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

(ii) The registrant 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.

Based on the above regulations under the Policy, what the Panel needs to do is to find out whether each and all of the above-mentioned elements are established. If all the three elements are established, the Panel will make a decision in favor of the Complainant. If the three elements are not established, the claims by the Complainant shall be rejected.

The Respondent did not submit the Response of any argument against what the Complainant claimed and to show his intention to retain the disputed domain name as required by the Policy and the Rules. If the Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint. In view of the situation, the Panel cannot but make the decision based primarily upon the contentions and the accompanying exhibits by the Complainant, except otherwise there is an exhibit proving to the contrary.

I. Identity or Confusing Similarity

Pursuant to Paragraph 4(a) (i) of the Policy, a Complainant must prove that the domain name is identical with or confusingly similar to a trademark or service mark in which the Complainant has rights.

(1) Complainant should have rights in a trademark or service mark

The Complainant has provided evidence of ownership of valid trademark registration for the trademark “ArcelorMittal” registered on August 3, 2007 in classes of 6, 7, 9, 12, 19, 21, 39, 40, 41, 42, covering European Union, Australia, USA and other countries, which was duly renewed with expiry date of August 3, 2027. The trademark is still valid and its registration date is much earlier than the registration date of the disputed domain name, i.e. August 30, 2024. The Complainant therefore has rights in the trademark “ArcelorMittal”.

(2) The domain name should be identical or confusingly similar to the trademark or service mark

The disputed domain name contains the Complainant's trade mark “ArcelorMittal” with the addition of the letter “N”. WIPO Overview 3.0 paragraph 1.9 states that “a domain name which consists of a common, obvious, or misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element.”. Previous panels have found that the slight spelling variations does not prevent a domain name from being confusingly similar to the Complainant’s trademark. Please see WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted <arcelormltal.com>.

As to the generic Top Level Domain “.com”, it is viewed as a standard registration requirement and as such can be disregarded for the purpose of assessing identity or confusing similarity. Please see WIPO Jurisprudential Overview 3.0 paragraph 1.11.1.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights according to paragraph 4(a)(i) of the Policy. Accordingly, the Complainant has proven that the first element required by paragraph 4(a) of the Policy is established.

II. Rights or Legitimate Interests of the Respondent

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and he 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. Moreover, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark “ArcelorMittal”. Besides, the disputed domain name resolves to an inactive page.

Once the 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. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element. Please see WIPO Jurisprudential Overview 3.0 paragraph 2.1.

Paragraph 4(c) of the Policy lists a number of circumstances which can be taken to demonstrate a respondent’s rights or legitimate interests in a domain name. However, the Respondent has failed to meet that burden. The Respondent did not submit any evidence to demonstrate any of the above circumstances.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has proven that the second element required by paragraph 4(a) of the Policy is established.

III. Bad Faith

The Complainant must prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered in bad faith and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.

These examples are merely illustrative and are not meant to be exhaustive. Other circumstances may therefore lead to a finding of bad faith pursuant to paragraph 4(a)(iii) of the Policy.

The Panel finds that the Respondent had knowledge of the Complainant’s trademark at the time of registration of the disputed domain name, considering the following circumstances:

WIPO Jurisprudential Overview 3.0 paragraph 3.2.2.mentions that noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark.

The Panel believes that before registration of the disputed domain name, the Respondent had made searches for the wording “ArcelorMittal” and known it is the trademark of the Complainant.

The Complainant contends that its trademark is widely known and past panels have confirmed the well-known of the trademark “ArcelorMittal” in the following cases:

CAC Case No. 101908, ARCELORMITTAL v. China Capital: "The Complainant has established that it has rights in the trademark "ArcelorMittal", at least since 2007. The Complainant's trademark was registered prior to the registration of the disputed domain name (February 7, 2018) and is widely well-known".

CAC Case No. 101667, ARCELORMITTAL v. Robert Rudd: "The Panel is convinced that the Trademark is highly distinctive and well-established".

WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell: “The Panel finds that the trademark ARCELORMITTAL is so well-known internationally for metals and steel production that it is inconceivable that the Respondent might have registered a domain name similar to or incorporating the mark without knowing of it”.

This Panel has read the above decisions and agreed with their confirmation on the well-known of the trademark “ArcelorMittal”.

In view of the Respondent’s internet searches, the distinctiveness and well-known of the Complainant's trademark, the Panel holds that the Respondent had knowledge of the Complainant’s trademarks at the time of registration of the disputed domain name. As the domain name would cause confusion to internet users, it should have avoided the registration, which is considered as good faith, rather it registered the disputed domain name. The Respondent deliberately sought to cause such confusion. Accordingly, the Panel finds that the disputed domain name has been registered in bad faith.

Typosquatting itself has been taken as evidence of bad faith registration and use by previous UDRP panels. For the same trademark of the same Complainant, WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted <arcelormltal.com>mentions: “The disputed domain name is an intentional misspelling of the Complainant’s ARCELORMITTAL trademark, as well as its <arcelormittal.com> domain name, and the Respondent is attempting to capitalize on typing errors committed by Internet users in trying to locate the Complainant on the Internet. In other words, it appears that the disputed domain name is a typosquatted version of the Complainant’s ARCELORMITTAL trademark and has intentionally been designed to closely mimic the Complainant’s trademark and its primary domain name <arcelormittal.com>”.

Moreover, the disputed domain name resolves to an inactive page. WIPO Jurisprudential Overview 3.0 paragraph 3.3 mentions that from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. 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.

Please see WIPO Case No. D2017-0246, <docmartens.xyz>, “Dr. Martens” International Trading GmbH and “Dr. Maertens” Marketing GmbH v. Godaddy.com, Inc. Please see WIPO Case No. D2000-0003, <telstra.org>, Telstra Corporation Limited v. Nuclear Marshmallows.

In this case, the Panel is convinced that the overall circumstances of this case strongly suggest that the Respondent’s non-use of the domain name is in bad faith. Such circumstances include the distinctiveness and well-known of the Complainant’s trademark and the Respondent’s failure to take part in the present proceedings.

Regarding the Complainant’s contention on bad faith, the Respondent should rebut it, but it did not make any response, which strengthened the Panel’s findings on its bad faith.

In view of all above, the Panel finds that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy. Therefore, the Complainant has proven that the third element required by paragraph 4(a) of the Policy is established.

Decision

For all the foregoing reasons, in accordance with paragraph 4(a) of the Policy and Rule 15 of the Rules, the Panel orders that the disputed domain name <arcelorminttal.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. **arcelorminttal.com**: Transferred

PANELLISTS

Name	**Yunze Lian**

DATE OF PANEL DECISION 2024-10-10

Publish the Decision