

Decision for dispute CAC-UDRP-104891

Case number	CAC-UDRP-104891
Time of filing	2022-10-03 09:19:55
Domain names	arcelormittaldigital.info

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	ARCELORMITTAL (SA)
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	JESUS GERARDO LEOS BERRONES (ORGANIZACION PROFESIONAL EN ARCHIVOS, S.A. DE C.V.)
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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 submitted evidence that it is the owner of the international trademark "ArcelorMittal" (wordmark), no. 947686, registered on the 3 August 2007 in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42, valid in various countries (hereinafter the "Trademark").

The Complainant submitted evidence that it has registered the domain name <arcelormittal.com> on the 27 January 2005.

FACTUAL BACKGROUND

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

The Complainant (ARCELORMITTAL S.A.) claims to be the largest steel producing company in the world and the market leader in steel for use in automotive, construction, household appliances and packaging.

The Complainant is the owner of the Trademark and of various domain names, such as the domain name <arcelormittal.com> (since 27 January 2006.).

The disputed domain name was registered on 27 September 2022 and resolves to a login page that displays the Trademark and mentions the name of the Complainant.

PARTIES CONTENTIONS

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

1. Confusing similarity

The disputed domain name consists of the Complainant's Trademark "ARCELORMITTAL" with the addition of the word "DIGITAL".

According to the Complainant, the addition of the word "DIGITAL" is not sufficient to avoid a likelihood of confusion with the Complainant's registered Trademark. The Complainant states that the addition of the word "DIGITAL" does not change the overall impression of being connected to the Complainant and the Trademark. Furthermore, the Complainant states that the gTLD ".INFO" does not change this overall impression of being connected to the Complainant and the Trademark.

The Panel notes that the disputed domain name incorporates the entirety of the Complainant's "ARCELORMITTAL" Trademark, with the sole addition of the word "DIGITAL" and the gTLD ".INFO".

The Panel remarks that Section 1.7 of WIPO Overview 3.0, clearly states that, "*in cases where a domain name contains the whole of a trademark, or where at least one dominant feature of the relevant trademark is recognisable in the domain name, the domain name shall normally be considered confusingly similar to that trademark for the purposes of UDRP status*".

The Panel is of the opinion that the sole addition of the word "DIGITAL" does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy. The word "DIGITAL" is a descriptive term which refers to the use of computer technology. Section 1.8 of WIPO Overview 3.0, clearly states: "*Where the relevant mark is recognisable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) would not preclude a finding of confusing similarity under the first element*".

The gTLD ".INFO" may be disregarded when it comes to considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights.

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, 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. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the Panel then must weigh all the evidence, with the burden of proof always remaining on the Complainant.

The Complainant argues that:

- The Respondent is not known as the disputed domain name (reference is made to the WHOIS information);
- The Respondent is not related in any way to the Complainant. The Respondent does not carry out any activity for, nor has any business with the Complainant;
- The Complainant has not granted a license or an authorization to the Respondent to make any use of the Trademark or apply for registration of the disputed domain name;
- The disputed domain name is used to host a website to collect personal data of the Complainant's employees, or anyone with credentials related to the Complainant. Therefore, the disputed domain name is not used for a bona fide offering of services or fair use, since the website can mislead internet users into believing that they are accessing the Complainant's website.

The Respondent did not file an administratively compliant (or any) response. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

The Panel finds that the Respondent does not appear to have any rights or legitimate interests associated with the Trademarks from the following facts:

- There is no evidence at all that the Respondent is or has been commonly known, by the disputed domain name or by the term "ARCELORMITTAL". Moreover, the WHOIS information does not provide any information that might indicate any rights to use the term "ARCELORMITTAL" by the Respondent.
- The Complainant's Trademark was registered on the 3 August 2007. The Complainant's domain name <arcelormittal.com> was registered on the 27 January 2006. The disputed domain name was registered by the Respondent on the 27 September 2022, which is 15 years after the registration of the Trademark and 16 years after the registration of the domain name <arcelormittal.com> by the Complainant.
- There is no evidence which shows that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without the intent to misleadingly divert consumers or to tarnish the Trademark. On the contrary, it appears that the Respondent is taking advantage (or at least intends to take advantage) of the Complainant's name and registered Trademark to collect personal data of employees, consumers and other individuals visiting the website available via the disputed domain name.
- The Respondent did not show to have any trademark rights or other rights regarding the term "ARCELORMITTAL".
- The Respondent does not seem to have any consent or authorisation to use the Trademark or variations thereof and does not seem to be related in any way to the Complainant.

In sum, on the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

3. Bad faith

The Complainant argues that the Respondent has registered the domain name with full knowledge of the Complainant's Trademarks, given the distinctiveness, reputation and notoriety of the Trademark and the Complainant.

The Complainant emphasises that the disputed domain name links to a login page displaying the Trademark. The Complainant remarks that the disputed domain name does not contain any information about the Respondent. Therefore, the Complainant argues the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his websites (par. 4(b)(iv) of the Policy). Moreover, the Respondent can collect personal information through this website, namely user IDs and passwords.

The Panel weighs these arguments and facts as follows:

First, the Panel is of the opinion that is inconceivable that the Respondent would have come up with a domain name consisting of the term "ARCELORMITTAL" in combination with the abbreviation "DIGITAL" without having prior knowledge of the Complainant and its Trademark and activities.

As mentioned already, the disputed domain name reproduces the Complainant's Trademark "ARCELORMITTAL" entirely, with the addition of the descriptive term "DIGITAL". Furthermore, the Respondent has implemented the Trademark on the website of the disputed domain name. Finally, the Complainant's Trademark and the domain name <arcelormittal.com> predate the registration of the disputed domain name. The Trademark covers the territory of Mexico, i.e., the Respondent's home country.

On the balance of probabilities, it can be expected from these facts that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence of the Complainant's Trademark at the time of registration and use of the disputed domain name.

The Respondent did not contest any of the Complainant's arguments and did not provide any explanation concerning its choice for registering and/or using a domain name that includes the Complainant's registered Trademark in combination with the word "DIGITAL".

Second, the Panel finds that the disputed domain name is not being used for any bona fide offering of goods or services. The disputed domain name is used intentionally attract, for commercial gain, Internet users by creating likelihood of confusion with the Complainant. The Respondent seeks to create the impression of acting on behalf of the Complainant or being connected to the Complainant. The Respondent has even added the Trademark and logo of the Complainant on its website and thus tries to impersonate the Complainant.

Moreover, the website available via the disputed domain name leads to a log-in page, where internet users are asked to fill in personal data. Collecting personal data by pretending to be another company or by creating the impression being connected to this company is in itself no bona fide offering of services.

The Panel is convinced that the Respondent had the Trademark of the Complainant in mind when registering and subsequently using the disputed domain name. The Panel concludes that there is at least a risk that the disputed domain name is being used for the purpose of misleading Internet users.

For all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith within the meaning of 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. **arcelormittaldigital.info**: Transferred

PANELLISTS

Name **Bart Van Besien**

DATE OF PANEL DECISION **2022-10-29**

Publish the Decision