

Decision for dispute CAC-UDRP-104931

Case number	CAC-UDRP-104931
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Time of filing	2022-10-18 09:21:43
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Domain names	investmittal.com
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	ArcelorMittal
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Aman Kumar
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other proceedings, pending or decided, which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the international trademark MITTAL no. 1198046 registered on December 5, 2013.

The Complainant also owns an important domain names portfolio, including the same distinctive wording MITTAL, such as the domain name <mittal-steel.com> registered on May 18, 2009, and <mittal.dev> registered on March 11, 2019.

FACTUAL BACKGROUND

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 operations in more than 60 countries. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant's website <arcelormittal.com> sets out, amongst other information, the following about the Complainant:

- Steel manufacturing in 17 countries
- Customers in 160 countries
- Employees in 2020 – 168,000
- Trademarked products – 200+

- Active patent families – 600+
- Research centres – 12
- R&D programs – 100+

The Respondent registered the disputed domain name <investmittal.com> on October 8, 2022.

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).

The Complainant contends that the disputed domain name is confusingly similar to its trademark MITTAL, as it includes the trademark in its entirety.

When part of a domain name is identical to a well-known trademark, it increases the likelihood of confusion or association between the domain name holder and the trademark owner. It is, therefore, sufficient to establish identity or confusing similarity for the purposes of the Policy. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. D2001-0902; *Dr. Ing. h.c. F. Porsche AG v. Vasilii Terkin*, WIPO Case No. D2003-003-0888.

The Complainant contends that the addition of the term “INVEST” is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark. It does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant and its trademark.

Here, the term “INVEST” when combined with the Complainant’s trademark MITTAL give the overall impression that the disputed domain name is connected with the Complainant’s trademark and accordingly there is the likelihood of confusion. The Panel considers that the term “INVEST” is a descriptive word that accentuates the likelihood of confusion as it is likely to create the impression that the disputed domain name relates to investment with Mittal.

Accordingly, the addition of the term “INVEST” to the Complainant’s trademark MITTAL cannot exclude a finding of confusing similarity of the disputed domain name with the Complainant’s trademark.

The Complainant further contends that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to the Complainant’s trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

It is now a well-established principle in the domain name space that generic top-level domains such as “.com”, “.org” or “.net” do not affect the domain name for the purpose of determining whether it is identical or confusingly similar. See, for example, WIPO Case No. D2006-0451, *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.* In WIPO Overview 3.0 §1.11.1, “the applicable Top Level Domain (“TDL”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test”.

The Panel considers that the addition of the generic top-Level domain suffix “.com” does not change the overall impression of the designation of the disputed domain name as being connected to the Complainant’s trademark MITTAL. Indeed, the Panel considers the addition of the suffix “.com” is irrelevant when assessing whether a domain name is identical or confusingly similar to a trademark. This is because gTLDs are only required for the functionality of a website.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark and that paragraph 4(a)(i) of the Policy is satisfied.

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 make out a prima facie case that the respondent lacks rights or legitimate interests. Once such a prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See WIPO Case No. D2003-0455, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*

In support of this ground, the Complainant makes the following contentions:

First, the Respondent is not identified in the Whois database as the disputed domain name.

Where information in the WHOIS database is not similar to the disputed domain name, a respondent is not commonly known by the disputed domain name. See, for example, Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>; Forum Case No. FA 699652, The Braun Corporation v. Wayne Loney.

The Panel accepts this uncontradicted contention, which is also supported by the evidence from the WHOIS database adduced by the Complainant.

Secondly, the Complainant contends that the Respondent is not related in any way with the Complainant because:

(a) the Complainant does not carry out any activity for nor has any business with the Respondent.

(b) the Complainant has not licensed nor authorized the Respondent to make use of its trademark MITTAL or apply for registration of the disputed domain name.

The Panel accepts this uncontradicted contention.

Finally, the Complainant asserts the disputed domain name resolves to a parking page with commercial links. This supports the Complainant's contentions that there is no bona fide offering of goods or services or legitimate non-commercial or fair use by the Respondent. See Forum Case No. FA 970871, Vance Int'l, Inc. v. Abend, and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe.

The Complainant's evidence shows that the disputed domain name resolves to a parking page with commercial links.

The Respondent has not filed any administrative compliant response to the Amended Complaint. As such, the Panel accepts the Complainant's evidence as uncontradicted.

Accordingly, the Panel finds the Respondent has no right or legitimate interests in the disputed domain name.

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).

There are two elements that must be satisfied – registration and use in bad faith.

Registration in bad faith

The Complainant's address and business are located in Luxembourg, France. The Respondent's address is located in Surrey, British Columbia, Canada.

The evidence also shows that the Complainant's trademark MITTAL is a well-known trademark. Past panels have confirmed the notoriety of the Complainant's trademarks. See for instance WIPO Case No. D2010-2049, Arcelormittal v. Mesotek Software Solutions Pvt. Ltd. ("the Complainant's marks MITTAL and MITTAL STEEL have been widely used and are well-known."); WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell ("the trademark ARCELORMITTAL is so well known internationally for metals and steel production").

Given the distinctiveness of the Complainant's trademark and reputation, and the Respondent's failure to respond to the proceedings, the Panel accepts the uncontradicted evidence of the Complainant's well-known trademark. The Panel considers that it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark.

Accordingly, it is inconceivable that the Respondent might have registered the disputed domain name similar to or incorporating the Complainant's trademark MITTAL without knowing of it.

Use in bad faith

The Panel has already referred to the uncontradicted facts set out in the Amended Complaint and accepts the evidence and contention that the disputed domain name resolves to a parking page with commercial links.

The Complainant contends the Respondent has attempted to attract Internet users for commercial gain to its own website for its own commercial gain, which is evidence of bad faith. See WIPO Case No. D2018-0497, StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC.

The Panel observes that the Respondent has not demonstrated any activity in respect of the disputed domain name. Accordingly, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would be lawful and legitimate.

The Panel accepts the uncontradicted evidence that the Respondent's incorporation of the Complainant's well-known trademark MITTAL into the disputed domain name coupled with a parking page with commercial links supports the Complainant's contention of registration and use in bad faith.

The Panel, therefore, concludes that the Respondent's holding of the disputed domain name in this case satisfies the requirement that the disputed domain name is being used in bad faith by the Respondent.

Accordingly, the Panel finds that the registration of the disputed domain name and its use was in bad faith.

PROCEDURAL FACTORS

Notification of proceedings to the Respondent

When forwarding a Complaint, including any annexes, electronically to the Respondent, paragraph 2 of the Rules states that CAC shall employ reasonably available means calculated to achieve actual notice to the Respondent.

Paragraphs 2(a)(i) to (iii) set out the sort of measures to be employed to discharge CAC's responsibility to achieve actual notice to the Respondent.

On November 3, 2022 the CAC by its non-standard communication notified the Respondent that the deadline for filing his response on the on-line platform will expire on November 7, 2022.

On November 8, 2022 the CAC by its non-standard communication stated as follows (omitting irrelevant parts):

Neither the written notice of the Complaint nor the advice of delivery thereof was returned to the Czech Arbitration Court. The CAC is therefore unaware whether the written notice was received by the Respondent or not. The e-mail notice sent postmaster@investmittal.com was returned back undelivered as the e-mail address had permanent fatal errors. The e-mail notice was also sent to aman26292@gmail.com, but we never received any proof of delivery or notification of undelivery. No further e-mail address could be found on the disputed site. The Respondent never accessed the online platform.

On November 8, 2022, the CAC by its non-standard communication sent a notice of the projected decision date as November 22, 2022 and a further notice of the appointment of the UDRP Panel.

On November 10, 2022, the Respondent sent an email to the CAC as follows (omitting irrelevant parts):

I received the following email for a dispute related to a domain name I recently bought from Godaddy.com. I just followed the instructions and I saw dispute details online. I also received a written notice today and it says "Denisa Bilik" as the "Case Administrator" However, I am not really sure about next steps, could you please guide?

It appears that the Respondent had knowledge of the proceedings and had access to the CAC on-line platform to access the dispute and file his response through the on-line platform within the time stipulated from the commencement of the administrative proceedings. The CAC's email of October 18, 2022 to which the Respondent referred to in his email sets out clearly the process for a respondent to register in the system and acquire access to the dispute. No further communications were made by the Respondent to the CAC.

Given the reasonable measures employed by the CAC as set out in the above non-standard communications, and that the Respondent has not provided any administrative compliant response since his email to the CAC on November 10, 2022 nor has the Respondent indicated to the CAC of his intention or otherwise to file an administrative compliant response despite stating in his email that he "followed the instructions", 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 Complainant owns the registered trademark MITTAL and several domain names that includes its trademark which is used in connection with its goods or services for a considerable time. It is a well-known trademark.

The Respondent registered the disputed domain name on October 8, 2022. The disputed domain name incorporates the Complainant's well-known trademark in its entirety by the addition of the term "INVEST" before the trademark.

The Complainant challenges the Respondent's registration of the disputed domain name under paragraph 4(a)(i) of the Uniform Dispute Resolution Policy and seeks relief that the disputed domain name be transferred to the Complainant.

The Respondent has failed to file any administratively compliant response.

For the reasons articulated in the Panel's reasons above, the Complainant has satisfied the Panel of the following:

(a) The disputed domain name is confusingly similar to the Complainant's well-known trademark MITTAL

- (b) The Respondent has no rights or legitimate interests in respect of the disputed domain name.
- (c) The disputed domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **investmittal.com**: Transferred

PANELLISTS

Name	William Lye OAM KC
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DATE OF PANEL DECISION 2022-11-20

Publish the Decision