

Decision for dispute CAC-UDRP-105354

Case number	CAC-UDRP-105354
Time of filing	2023-04-14 11:11:29
Domain names	ukrainearcelormittal.com

Case administrator

Name	Olga Dvořáková (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

Organization	Yuriy Izmailov (Mettalbro)
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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 evidence shows that the Complainant has established its rights in the internationally registered ARCELORMITTAL trademark, registered number 947686, as the Complainant is the owner of that trademark and registered it on August 3, 2007.

FACTUAL BACKGROUND

The Complainant is a Luxembourg company that is the largest steel producing company in the world. It is the registered owner the international trademark n°947686 ARCELORMITTAL® ("the ARCELORMITTAL trademark") that it registered on August 3, 2007.

The disputed domain name <**ukrainearcelormittal.com**> was registered by the Respondent on April 7, 2023 and it is used by the Respondent to redirect internet users to a website that pretends to be that of the Complainant. The Complainant is concerned at the damage done to its trademark and its business by the Respondent's using the domain name to mislead internet users to the prejudice of the Complainant. It has therefore filed this Complaint under the UDRP to have the domain name transferred to itself.

PARTIES CONTENTIONS

COMPLAINANT

The Complainant made the following contentions.

The Complainant is a Luxembourg company engaged in the industry of producing steel. It is the largest steel producing company in the world. In the course of that business it uses the website www.arcelormittal.com and several other domain names.

Complainant is the owner of the international trademark n°947686 ARCELOMITTAL® (“the ARCELOMITTAL trademark”) that it registered on August 3, 2007.

The disputed domain name <**ukrainearcelormittal.com**> was registered by the Respondent on April 7, 2023 and it is used to redirect internet users to a website that pretends to be that of the Complainant.

The Complainant can make out a case based on the three relevant criteria set out in the Policy.

1. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

The disputed domain name <**ukrainearcelormittal.com**> is confusingly similar to the Complainant's trademark ARCELOMITTAL®. It is similar to the trademark because the entirety of the trademark is included in the domain name. It is also confusingly so because it in effect asserts that the domain name is an official domain name of the Complainant dealing with its commercial activities in Ukraine, which it clearly is not. The addition of the geographic word “ukraine” is also not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark ARCELOMITTAL®, which it clearly is. That submission is supported by many prior UDRP decisions that are cited by the Complainant.

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

The Complainant is first required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests.

In that regard, the Complainant submits that the Respondent is not commonly known by the disputed domain name. That is so because the relevant Whois information shows that the registrant is known by its name and not by the disputed domain name.

Secondly, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name because it 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 ARCELOMITTAL® trademark nor to apply for registration of the disputed domain name.

Furthermore, the disputed domain name resolves to a website that purports to be an official website of the Complainant. The Respondent obviously tries by this means to pass itself off as an affiliate of the Complainant in Ukraine and it does this for its own commercial gain. Therefore, the Respondent is not using the domain name in connection with a *bona fide* offering of goods or services or a legitimate non-commercial or fair use.

Nor does the evidence show that the Respondent has any other right or legitimate interest in the domain name.

The Complainant has therefore established that the Respondent has no right or legitimate interest in respect of the disputed domain name <**ukrainearcelormittal.com**>.

3. The domain name was registered and is being used in bad faith

That is so because Complainant contends that the disputed domain name <**ukrainearcelormittal.com**> is confusingly similar to its distinctive trademark ARCELOMITTAL®.

Moreover, Complainant's trademark ARCELOMITTAL® is widely known and many prior UDRP decisions have confirmed the notoriety of that trademark.

Given the distinctiveness of the Complainant's trademarks and reputation, it should be inferred that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Finally, the disputed domain name is redirecting to a website that reproduces the Complainant's information and trademarks in order to create a likelihood of confusion. Therefore, the Complainant contends that by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the web site.

Thus, Complainant contends that Respondent has registered and used the disputed domain name <**ukrainearcelormittal.com**> in bad faith.

RESPONDENT

The Respondent did not file a Response in this proceeding.

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

DISCUSSION AND FINDINGS

This is a mandatory administrative proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”) of the Internet Corporation for Assigned Names and Numbers (“ICANN”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the CAC Supplemental Rules.

A. Administrative compliance

By notification dated April 14, 2023 and in accordance with paragraph 4 (b) of the Rules, the CAC notified the Complainant that the Complaint was administratively deficient in that the Complaint did not provide the name of the Respondent (domain-name holder) and all information (including any postal and e-mail addresses and telephone and fax numbers) known to Complainant regarding how to contact Respondent or any representative of Respondent, including contact information based on pre-complaint dealings, in sufficient detail to allow the CAC to send the Complaint as described in Paragraph 2(a) [Rules, Paragraph 3(b)(v)]. The notification invited the Complainant to have regard to the Registrar’s verification available in the online case file in the form of a non-standard communication regarding the appropriate identification of the domain name holder. At a later hour on April 14, 2023, the Complainant filed an Amended Complaint and the CAC determined also on April 14, 2023, that the Complaint should be admitted to proceed further in the Administrative Proceeding.

The Panel has reviewed all of the above matters and makes a finding that within the meaning of paragraph 4(b) of the Rules, the administrative deficiencies have been corrected and that this matter has proceeded properly to the Panel in accordance with the Policy and the Rules.

B. Substantive matters

Paragraph 15 of the Rules provides that the Panel is to decide the complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. In that regard, the Panel also notes that the onus is on the complainant to make out its case and past UDRP panels have consistently said that a complainant must show that all three elements of the Policy have been made out before any order can be made to transfer a domain name.

The Panel therefore turns to discuss the various issues that arise for decision on the facts as they are known.

For the complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that:

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

The Panel will therefore deal with each of these requirements in turn.

Identical or Confusingly Similar

The Complainant has adduced evidence that the Panel accepts, namely Annex 2 to the Complaint, that the Complainant is the registered owner of the internationally registered trademark being trademark n°947686 for ARCELORMITTAL® ("the ARCELORMITTAL trademark") that it registered via WIPO on August 3, 2007.

It will be seen therefore that the trademark was registered well before the disputed domain name was registered, which was on April 7, 2023 and it is used to redirect internet users to a website that pretends to be that of the Complainant. The Complainant has verified that the Respondent is the registrant of the disputed domain name.

The Panel next finds that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark for the following reasons.

First, the domain name includes the entirety of the ARCELORMITTAL trademark. Accordingly, it is clear that the domain name has been inspired by and is an attempt to copy the trademark. It is also clear and has been held many times in prior UDRP decisions that when internet users see an entire trademark used in a domain name in this way, they naturally conclude that the domain name is an official domain name of the trademark owner. Secondly, the domain name also includes, as a prefix to the trademark, the generic term "ukraine". Internet users who see the entire domain name would then naturally conclude that the entire domain name was an assertion that it related to the Complainant itself and/or that it was authorised by the Complainant, none of which is true. In this particular case, internet users would also conclude that the domain name was owned by a person or entity that was entitled to say that it could speak on behalf of the Complainant and could use the Complainant's name and trademark, which is also not true. The internet user would also conclude that the domain name would lead to an official website of the Complainant dealing with its commercial activities in Ukraine, which is also not true.

Finally, the ".com" suffix which is present in the domain name, is disregarded for the purposes of assessing confusing similarity, as it could not negate the clear impression that the domain name is confusingly similar to the trademark.

The Panel therefore finds that the disputed domain name is confusingly similar to the ARCELORMITTAL trademark and that this conclusion is supported by and consistent with the many prior UDRP decisions cited by the Complainant.

The Complainant has thus made out the first of the three elements that it must establish.

Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

But by virtue of paragraph 4(c) of the Policy, it is open to a respondent to establish its rights or legitimate interests in a domain name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you [respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you [respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Thus, if a respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the domain name, the complainant will have failed to discharge its onus and the complaint will fail.

It is also well-established that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests and that when such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent cannot do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Panel, after considering all of the evidence in the Complaint, finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name.

That *prima facie* case is made out from the following considerations.

- The Complainant has clearly established its rights in the ARCELORMITTAL mark.
- The evidence of the Complainant is that the Respondent is not related in any way to the Complainant's business, is not affiliated with the Complainant or authorized by it in any way to use the ARCELORMITTAL trademark and does not carry out any activity for, nor has any business with, the Complainant.
- The evidence shows that the Respondent is not commonly known by the domain name under paragraph 4(c)(ii) of the Policy.
- The evidence is that no licence nor authorisation has been granted by the Complainant to the Respondent to make any use of the trademark or to register the disputed domain name.
- The disputed domain name resolves to a website that purports to be the website of the Complainant. Thus, it can be assumed that the Respondent registered it for a bad motive such as to try to sell it or to use it to make money by pretending that it is the

Complainant. In that regard, the Panel has examined the contentious website and finds that it clearly purports to be a website of the Complainant that deals with the Complainant, its products and its commercial activities in Ukraine. This is deceptive as it is untrue and it therefore shows that the Respondent has no right to the domain name and no legitimate interest in it.

- None of this conduct is *bona fide* or legitimate and none of it comes within any of the criteria for a right or legitimate interest in a domain name that are set out in paragraph 4(c) (i) – (iii) of the Policy. Nor is there any evidence to show that the Respondent could in any other way show a right or legitimate interest in the domain name.

These facts give rise to the *prima facie* case made out by the Complainant.

The Respondent has not filed a Response or made any other answer to the claims of the Complainant and is in default. Accordingly, the *prima facie* case has not been rebutted and the Complainant has made out the second of the three elements that it must establish.

Registered and Used in Bad Faith

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

Paragraph 4(b) of the Policy sets out four circumstances, any one of which is evidence of the registration and use of a domain name in bad faith, although other circumstances may also be relied on, as the four circumstances are not exclusive. The four specified circumstances are:

- (i) circumstances indicating that the respondent has registered or 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 the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent's website 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 website or location or of a product or service on the site or location.

There is no need to repeat all of the details set out already, but the conduct of the Respondent in registering the domain name clearly amounts to bad faith registration and its conduct since the registration by retaining it and putting the Complainant at the risk of it being used to its detriment and in breach of its trademark, clearly amount to bad faith use. Thus, bad faith registration and use of the domain name has been established.

That is so for the following reasons.

First, the Respondent must have been aware of the existence of the Complainant and its prominent reputation when it registered the disputed domain name, because the Respondent chose the domain name itself and then made an addition to it by adding the prefix "ukraine" to suggest that the business being portrayed was its, the Respondent's, business in Ukraine or that it was entitled to say that it was. Thus, the Respondent had actual knowledge of the Complainant and its trademark which has long been a ground for finding bad faith registration and, by retaining the domain name, its use. The Panel therefore finds that it is highly likely that the Respondent chose the trademark, made the addition and registered the domain name deliberately to invoke the existence and activities of the Complainant in Ukraine for an improper purpose and therefore in bad faith.

Secondly, the conduct of the Respondent brings the case within the provisions of paragraph 4(b) (i) of the Policy, that being the most likely explanation for registering the domain name and for retaining it.

Thirdly, the same considerations brings the case within the provisions of paragraph 4(b) (iii) of the Policy.

Fourthly, the same conduct of the Respondent leads to the conclusion that the Respondent, in registering the domain name deceptively and without any authority to do so, must have intended to create a likelihood of confusion, with the intention of attracting current and potential customers of the Complainant looking for its services and doing so in this misleading manner. Thus, the matter comes within the provisions of paragraph 4(b) (iv) of the Policy.

Fifthly, there is no conceivable ground for concluding that the Respondent was acting in good faith, as the Respondent was clearly targeting the Complainant for its, the Respondent's, own financial interest.

Finally, in addition and having regard to the totality of the evidence, the Panel finds that, in view of Respondent's registration of the disputed domain name using the the ARCELORMITTAL trademark and retaining it, the Respondent registered and used it in bad faith within the generally accepted meaning of that expression.

As the Complainant rightly submits, such conduct of the Respondent has been held by many previous UDRP panels to constitute bad faith registration and use.

Accordingly, the Complainant has shown the third of the three elements that it must establish.

It is therefore entitled to the relief that it claims.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **ukrainearcelormittal.com**: Transferred

PANELLISTS

Name	Neil Brown
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DATE OF PANEL DECISION 2023-05-10

Publish the Decision