

Decision for dispute CAC-UDRP-105687

Case number **CAC-UDRP-105687**

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Domain names **arcelornlittal.com**

Case administrator

Name **Olga Dvořáková (Case admin)**

Complainant

Organization **ARCELORMITTAL**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Organization **Mamu Barbara (Privacy Protect, LLC (PrivacyProtect.org))**

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 registration:

- registered international word mark “ArcelorMittal” No. 947686 for goods and services in the classes 6, 7, 9, 12, 19, 21, 39, 40, 41, 42, and the registration date on August 3, 2007.

The Complainant proved its ownership of listed trademark registration by the submitted extract from the Register.

FACTUAL BACKGROUND

ArcelorMittal (hereinafter referred to as “the Complainant”) is a company specializing in steel production in the world (see their website at: www.arcelormittal.com).

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 59 million tons of crude steel made in 2022. It holds sizeable captive supplies of raw materials and operates extensive distribution networks (print-screen of the Complainant’s webpage).

The Complainant is the owner of the international trademark No. 947686 ARCELORMITTAL registered on August 3, 2007.

The Complainant also owns an important domain names portfolio, such as the domain name <arcelormittal.com> registered since January 27, 2006 (extract from the Who is database).

According to the Registrar, the Respondent is 'Mamu Barbara'. The Respondent's provided address is at New Port, the USA.

The disputed domain name <arcelornltal.com> (hereinafter "disputed domain name") was registered on July 31, 2023 (extract from the Whois database) and resolves to a parking page (print-screen of the webpage under <arcelornltal.com>). Besides, MX servers are configured (extract from MX lookup tool service).

PARTIES CONTENTIONS

COMPLAINANT:

A. The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's trademark. The disputed domains include the Complainant's trademark in its entirety.

The Complainant asserts that the obvious misspelling of the Complainant's trademark (*i.e.* the substitution of the letter "I" by the letter "L") is characteristic of a *typosquatting* practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. Previous panels have found that the slight spelling variations does not prevent a domain name from being confusing similar to the Complainant's trademark [WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted <arcelornltal.com> ("As the disputed domain name differs from the Complainant's trademark by just two letters, it must be considered a prototypical example of typosquatting – which intentionally takes advantage of Internet users that inadvertently type an incorrect address (often a misspelling of the complainant's trademark) when seeking to access the trademark owner's website. WIPO Overview 3.0 at section 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.")].

Furthermore, the Complainant 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.

B. The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name [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> ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c) (ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c) (ii).")].

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name <arcelornltal.com> 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.

The Complainant adds that 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. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can evidence that a respondent lacks rights and legitimate interests in the domain name [FORUM Case No. 1597465, The Hackett Group, Inc. v. Brian Hens / The Hackett Group ("The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy ¶ 4(a)(ii).")].

Finally, the Complainant points out that the disputed domain name points to a parking page. The Complainant contends that the Respondent did not use the disputed domain name, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name [FORUM Case No. FA 1773444, Ashley Furniture Industries, Inc. v. Joannet Macket / JM Consultants ("The Panel finds that Respondent's lack of content at the disputed domain shows the lack of a bona fide offering of goods or services or a legitimate noncommercial or fair use per Policy ¶¶ 4(c)(i) and (iii).")].

Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no right or legitimate interest in respect of the disputed domain name <arcelornltal.com>.

C. The Complainant contends that the disputed domain name has been registered and is being used in bad faith

The Complainant contends that the disputed domain name <arcelornltal.com> is confusingly similar to its distinctive trademark.

The Complainant asserts that the Complainant's trademark is widely known. Past panels have confirmed the notoriety of the trademark 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.")

The Complainant assumes, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark [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.")].

Moreover, the Complainant states the misspelling of the trademark was intentionally designed to be confusingly similar to the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith [FORUM Case No. FA 877979, Microsoft Corporation v. Domain Registration Philippines ("In addition, Respondent's misspelling of Complainant's MICROSOFT mark in the <microsoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy ¶ 4(a)(iii).")].

Furthermore, the disputed domain name points to a parking page. The Complainant contends that 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 that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

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.

For instance:

- WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows;
- WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen.

Finally, the disputed domain name has been set up with MX records which suggests that it may be actively used for e-mail purposes [CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono ("There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.")].

On those facts, the Complainant contends that the Respondent has registered the disputed domain name <arcelornlttal.com> and is using it in bad faith.

RESPONDENT:

No administratively Complaint 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 UDRP).

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 UDRP).

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 UDRP).

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

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. Therefore, the Panel proceeds to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them (Paragraph 5(f) of The Rules).

1. CONFUSING SIMILARITY

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark "ArcelorMittal".

The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (hereinafter referred to as "The WIPO Overview 3.0") in Paragraph 1.7 states: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

The WIPO Overview 3.0 in Paragraph 1.9 states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. [...] Examples of such typos include (i) adjacent keyboard letters, (ii) substitution of similar-appearing characters (e.g., upper vs lower-case letters or numbers used to look like letters), (iii) the use of different letters that appear similar in different fonts, [...]."

In the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin, the panel stated that: "In numerous cases, it has been held that a domain name that wholly incorporates a Complainant's registered mark may be sufficient to establish confusing similarity for purposes of the UDRP."

In the WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted, the panel stated that: "As the disputed domain name differs from the Complainant's trademark by just two letters, it must be considered a prototypical example of typosquatting – which intentionally takes advantage of Internet users that inadvertently type an incorrect address (often a misspelling of the complainant's trademark) when seeking to access the trademark owner's website."

In the WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A., the panel stated that: "It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar".

The Complainant has established that it owns the registered international word mark "ArcelorMittal" protected for the products in connection with steel production (evidenced by extract from the Register). The Complainant's trademark is included in the disputed domain name in its entirety.

The disputed domain name <arcelornltal.com> differs from the Complainant's trademark "ArcelorMittal" by the substitution of the letter „m“ to „n“ and by the substitution of the letter "I" by the letter "L".

The mentioned substitution can be understood as a typical example of *typosquatting* (in the way of substitution of similar-appearing characters (e.g., upper vs. lower-case letters or numbers used to look like letters). This variation does not prevent the disputed domain name from being confusingly similar.

Therefore, the disputed domain name as it reproduces the "ArcelorMittal" trademark in its entirety, with the typosquatting substitution is considered to be confusingly similar to the relevant trademark.

As a result, the Panel finds that the Complainant has satisfied the requirement under Paragraph 4(a)(i) of the UDRP.

2. THE RESPONDENT'S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME

The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

According to Paragraph 4(a)(ii) of the UDRP, the Complainant shall make case that the Respondent lacks rights and legitimate interests in the disputed domain name. If the Complainant fulfils this demand the burden of proof shifts to the Respondent and so the Respondent shall demonstrate rights or legitimate interests in the disputed domain name. If the Respondent fails to prove its rights or legitimate interests, it is assumed that the Complainant satisfied the element of Paragraph 4(a)(ii) of the UDRP (CAC Case No. 102430, Lesaffre et Compagnie v. Tims Dozman). Moreover, past panels were of the view that it is difficult or sometimes impossible to prove negative facts, i.e., absence of rights or legitimate interest on the part of the Respondent. In this respect, past panels referred to the WIPO Case No. D2000-1769, Neusiedler Aktiengesellschaft v. Vinayak Kulkarni. Within the meaning of Paragraph 4(a)(ii) of the Policy, once the complainant has made something credible (*prima facie* evidence), the burden of proof shifts to the Respondent to show that he has rights or legitimate interests in the domain name at issue by providing concrete evidence.

In the CAC Case No. 102279, FileHippo s.r.o. v. whois agent, the panel stated that "[i]n the absence of a response, the Panel accepts the Complainant's allegations as true that the Respondent has no authorization to use the Complainant's trademarks in the disputed domain name. Hence, as the Complainant has made out its *prima facie* case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under Paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of Paragraph 4(a)(ii) of the Policy."

In the FORUM Case No. FA 1781783, Skechers U.S.A. Inc. v. Chad Moston / Elite Media Group, the panel stated that: “where a response is lacking, WHOIS information can support a finding that the respondent is not commonly known by the disputed domain name”.

In the present case, the Complainant asserts that the Respondent is not identified in the Whois database as the disputed domain name holder (proven by extract from the Whois database).

The Complainant contends that the Respondent is not related in any way to the Complainant and that the Complainant never granted any license nor authorization to the Respondent to use the Complainant’s trademark or apply for registration of the disputed domain name.

Furthermore, the disputed domain name resolves to the parking page as the print-screen of the webpage under <arcelornlital.com> shows. Therefore, the Panel agrees with the Complainant’s contention that the Respondent did not use the disputed domain name and has no demonstrable plan to use the disputed domain name.

The Respondent did not reply to the Complaint and so failed to demonstrate its rights or legitimate interests in the disputed domain name.

For these reasons, the Panel finds that the Complainant has satisfied the condition within the meaning of Paragraph 4(a)(ii) of the Policy.

3. THE REGISTRATION AND USE OF THE DISPUTED DOMAIN NAME IN BAD FAITH

The Panel finds that the Respondent registered and used the disputed domain name in bad faith.

The WIPO Overview 3.0 in Paragraph 3.1.4 states: “Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith.”

The WIPO Overview 3.0 in Paragraph 3.3 states: “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.”

In the WIPO Case No. D2006-1440, National Football League v. Thomas Trainer, the panel stated: “when a registrant, such as the Respondent here, obtains a domain name that is confusingly similar to a famous mark, with no apparent rights or legitimate interests in the name, and then fails to respond to infringement claims and a UDRP Complaint, an inference of bad faith is warranted.”

In the WIPO Case No. D2015-1167, Valero Energy Corporation and Valero Marketing and Supply Company v. Sharad Bhat, the panel stated that: “In accordance with previous UDRP decisions, inactive or passive holding of a domain name, under the circumstances does not prevent a finding of bad faith use.”

In the present case, the Complainant owns the registered international trademark “ArcelorMittal”. Past panels have decided that the “ArcelorMittal” trademark is well-known (CAC Case No. 101908, ArcelorMittal v. China Capital) and has a distinctive nature (CAC Case No. 101667, ArcelorMittal v. Robert Rudd). Moreover, the Complainant has a certain reputation in the area of steel production while having customers in more than 150 countries as it is apparent from the print-screen of its website.

Furthermore, in the WIPO Case No. DCO2018-0005, ArcelorMittal SA v. Tina Campbell, the panel found that the Complainant’s trademark is so well-known internationally for steel production that it is inconceivable that the Respondent might have registered a domain name similar to the Complainant’s trademark without knowing of it.

Therefore, this Panel assumes that the Respondent must have been aware of the Complainant’s trademark and its reputation before the registration of the disputed domain name on July 31, 2023.

In addition, the activity of typosquatting with the clear intention of creating confusing similarity may serve as further evidence of bad faith (FORUM Case No. FA 877979, Microsoft Corporation v. Domain Registration Philippines).

Moreover, the disputed domain name resolves to an inactive parking website. By that, the Respondent is passively holding the disputed domain with no demonstrable plan to use the disputed domain name. Past panels have stated that the incorporation of a well-known mark into a domain name, coupled with an inactive parking website, may be evidence of bad faith (WIPO Case No. D2000-0003, Telstra Corporation Limited v. Nuclear Marshmallows; or WIPO Case No. D2000-0400, CBS Broadcasting, Inc. v. Dennis Toeppen; or WIPO Case No. D2000-0574, Jupiters Limited v. Aaron Hall).

The Complainant submitted evidence that the disputed domain name has been set up with MX records (proven by extract from MX lookup tool service). Active MX records means that the disputed domain name might be used for e-mail purposes. It is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address (CAC Case No. 102827, JCDECAUX SA v. Handi Hariyono).

Following the above mentioned, the Panel finds that the Complainant has satisfied the element pursuant to Paragraph 4(a)(iii) of the UDRP.

Accepted

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

- 1. **arcelornlital.com**: Transferred

PANELLISTS

Name	Radim Charvát
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DATE OF PANEL DECISION 2023-09-07

Publish the Decision