

ADMINISTRATIVE PANEL DECISION

Arcelormittal v. Stephanie Dietz, arcelormitt.org
Case No. D2023-2620

1. The Parties

The Complainant is Arcelormittal, Luxembourg, represented by Nameshield, France.

The Respondent is Stephanie Dietz, arcelormitt.org, United States of America.

2. The Domain Name and Registrar

The disputed domain name <arcelormitts.com> is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint in French was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 19, 2023. On June 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 19, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 29, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center sent an email in English and French regarding language of proceeding. The Complainant filed an amended Complaint in English on June 29, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 1, 2023.

The Center appointed Tobias Malte Müller as the sole panelist in this matter on August 9, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant describes itself as the largest steel producing company in the world and the market leader in steel for use in automotive, construction, household appliances and packaging.

The Complaint is based on International trademark ARCELORMITTAL no. 947686 registered on August 3, 2007 for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 and designating multiple countries.

The disputed domain name was registered on June 14, 2023.

It results from the Complainant's documented allegations that the disputed domain name does not resolve to any active website ("Unable to connect"). However, mail exchange ("MX") servers have been activated in relation with the disputed domain name.

5. Parties' Contentions

A. Complainant

Firstly, the Complainant points out that the disputed domain name is confusingly similar to its prior trademark ARCELORMITTAL. Replacing the letters "al" by the letter "s" at the end of the disputed domain name is an obvious misspelling of the Complainant's trademark ARCELORMITTAL and characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

Secondly, the Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name. In particular, the Complainant submits that the Respondent has not given the Respondent any authorization or permission to register or use its trademark ARCELORMITTAL. Furthermore, the Respondent is not related in any way with the Complainant and the latter does not carry out any activity for, nor has any business with the Respondent.

Thirdly, the Complainant contends that the Respondent registered and uses the disputed domain name in bad faith. The Complainant states that the misspelling was intentionally designed to be confusingly similar with the Complainant's trademark. 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. Furthermore, the disputed domain name is inactive and MX servers are configured.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements in order to obtain an order that the disputed domain name should be transferred or cancelled:

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

- (ii) the Respondent 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.

The Panel is satisfied that the registrant of record for the disputed domain name is the Respondent and will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and subsequently establish that the disputed domain name is identical or confusingly similar to said mark.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. As noted in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, this test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. (This may also include recognizability by technological means such as search engine algorithms.) In some cases, such assessment may also entail a more holistic aural or phonetic comparison of the complainant's trademark and the disputed domain name to ascertain confusing similarity.

While each case is judged on its own merits, 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. In addition, section 1.9 of the [WIPO Overview 3.0](#) explains that a domain name which consists of a common, obvious, or intentional misspelling of a trade mark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element, stemming from the fact that the domain name contains sufficiently recognisable aspects of the relevant mark. Examples of such typo can be the inversion of letters and numbers, or the addition or interspersion of other terms or numbers. In the case at hand, the Panel finds the Complainant's ARCELORMITTAL mark to be readily recognizable in the disputed domain name, the mere substitution of the final letters "al" by an "s" not being sufficient to avoid this recognizability.

The generic Top-Level Domain ".org" may be disregarded, as it is viewed as a standard registration requirement (see [WIPO Overview 3.0](#), section 1.11.1).

Hence, this Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark ARCELORMITTAL pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests in the disputed domain name. In the Panel's view, based on the unrebutted allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain name.

No content is displayed on the website to which the disputed domain name resolves. Such use can neither be considered a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue in the sense of paragraph 4(c)(i) and (iii) of the Policy (see, e.g., *Boehringer Ingelheim Pharma GmbH & Co.Kg v. Mrs. Toy Rösler*, WIPO Case No. [D2022-1094](#)).

Finally, the Panel does not dispose of any elements that could lead the Panel to the conclusion that the Respondent is commonly known by the disputed domain name or that it has acquired trademark rights pursuant to paragraph 4(c)(ii) of the Policy.

It is acknowledged that once the Panel finds 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. Since the Respondent in the case at hand failed to come forward with any allegations or evidence in this regard, this Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant is therefore deemed to have satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

According to the Complainant's documented and undisputed allegations, the disputed domain name is passively held. With comparative reference to the circumstances set out in paragraph 4(b) of the Policy deemed to establish bad faith registration and use, prior UDRP panels have found that the apparent lack of active use (e.g., to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith under the doctrine of passive holding (see, e.g., *Boehringer Ingelheim Pharma GmbH & Co.Kg v. Mrs. Toy Rösler*, WIPO Case No. [D2022-1094](#) with further references). The Panel must therefore examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Factors that have been considered relevant in applying the passive holding doctrine include (see [WIPO Overview 3.0](#), section 3.3):

- "(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."

In the case at hand, the Panel finds that the circumstances listed hereinafter and surrounding the registration suggest that the Respondent was aware that he has no rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith (see *CCA and B, LLC v. Domain Administrator, Fundacion Privacy Services LTD*, WIPO Case No. [D2021-1532](#); *Actelion Pharmaceuticals, Ltd v. Whois Agent, Whois Privacy Protection Service, Inc / Jean-Paul Clozel, supra; America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. [D2000-1460](#)):

- (i) the fact that the disputed domain name has been connected to active MX records so that Respondent could be engaged in a phishing scheme;
- (ii) the fact that the details disclosed for the Respondent by the Registrar were incomplete or false, noting the mail courier's inability to deliver the Center's written communications;
- (iii) the Respondent's failure to respond to this Complaint;
- (iv) the implausibility of any good faith use to which the disputed domain name may be put;
- (v) the distinctiveness of the trademark ARCELORMITTAL which has existed since many years; and
- (vi) the trademark ARCELORMITTAL being almost identically incorporated in the disputed domain name.

In the light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant is therefore deemed to also have satisfied the third element, paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <arcelormitts.com> be transferred to the Complainant.

/Tobias Malte Müller/

Tobias Malte Müller

Sole Panelist

Date: August 23, 2023