

## **ADMINISTRATIVE PANEL DECISION**

Arcelormittal v. Fabio Vlad

Case No. D2024-0628

### **1. The Parties**

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

The Respondent is Fabio Vlad, Germany.

### **2. The Domain Name and Registrar**

The disputed domain name <arclormittal.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 12, 2024. On February 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 13, 2024, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 19, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on February 20, 2024.

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 March 4, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 24, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 25, 2024.

The Center appointed Johan Sjöbeck as the sole panelist in this matter on March 26, 2024. 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 has submitted evidence that it is the owner of the international trademark ARCELORMITTAL, with registration number 947686, dated August 3, 2007. The trademark is registered for goods and services in classes 6, 7, 9, 12, 19, 21, 39, 40, 41, and 42, and it designates a number of jurisdictions including the European Union.

The disputed domain name was registered on February 6, 2024. The disputed domain name resolves to an inactive webpage, and the Domain Name System ("DNS") servers of the disputed domain name contain active mail exchange ("MX") records.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

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 crude steel made in 2022. The Complainant holds sizeable captive supplies of raw materials and operates extensive distribution networks. The Complainant is the owner of the trademark ARCELORMITTAL since August 3, 2007. The Complainant also holds an important domain name portfolio, including the domain name <arcelormittal.com> registered since January 27, 2006. The disputed domain name was registered on February 6, 2024 and is active with MX servers configured.

The disputed domain name is confusingly similar to the trademark ARCELORMITTAL. The obvious misspelling of the trademark, i.e., the inversion of the letter "e" and "l" and the deletion of the letter "t", is a characteristic typosquatting practice intended to create confusing similarity with a trademark. The slight spelling variation does not prevent the disputed domain name from being confusing similar to the Complainant's trademark. See *ArcelorMittal (Société Anonyme) v. Name Redacted*, WIPO Case No. [D2020-3457](#) (<arcelormittal.com>) and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9 which states that "[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". Consequently, the Complainant maintains that the disputed domain name is confusingly similar to the Complainant's trademark.

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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Whois information is not similar to the disputed domain name and the Respondent is not known by the disputed domain name. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and the Respondent 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 trademark ARCELORMITTAL, or apply for registration of the disputed domain name.

The misspelling of the trademark ARCELORMITTAL was intentionally designed to be confusingly similar with the Complainant's trademark, which is evidence of bad faith. The disputed domain name is a typosquatted version of the trademark ARCELORMITTAL. 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 disputed domain name. The disputed domain name is not actively used for a website. The Complainant contends that the Respondent did not use the disputed domain name or has no demonstrable plan to use the disputed domain name. Thus, in accordance with the foregoing, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant contends that the disputed domain name is confusingly similar to the Complainant's distinctive trademark ARCELORMITTAL, which is widely known. Previous panels have confirmed the notoriety of the trademark. The Complainant's trademark was registered prior to the registration of the disputed domain name and is widely known. Thus, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark. See *ArcelorMittal SA v. Tina Campbell*, WIPO Case No. [DCO2018-0005](#) in which the panel stated "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".

Furthermore, the disputed domain name resolves to an inactive web 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 disputed 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 the trademark law. As prior 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. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *CBS Broadcasting, Inc. v. Dennis Toeppen*, WIPO Case No. [D2000-0400](#). The disputed domain name's active MX servers indicate that the disputed domain name may be actively used for fraudulent email scheme purposes. Considering the above, the Complainant maintains that Respondent has registered and used the disputed domain name in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove each of the following:

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

### **A. Identical or Confusingly Similar**

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. See [WIPO Overview 3.0](#), section 1.7.

From the submitted evidence, it is clear that the Complainant is the owner of the registered trademark ARCELORMITTAL, and the Panel concludes that the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Although the letters "e" and "l" are in reverse order and the letter "t" is omitted, the Panel finds that the Complainant's

trademark is readily recognizable in the disputed domain name. Therefore, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademark. See [WIPO Overview 3.0](#), section 1.9.

In light of the above, the Panel finds that the Complainant has proven the requirement under paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

The Complainant must show that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) the Respondent uses or has made preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services prior to the dispute; or
- (ii) the Respondent is commonly known by the disputed domain name, even if the Respondent has not acquired any trademark rights; or
- (iii) the Respondent is making 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.

The Complainant's trademark registration for ARCELORMITTAL predates the Respondent's registration of the disputed domain name. The Complainant has not licensed, approved, or in any way consented to the Respondent's registration and use of the trademark in the disputed domain name. There is no evidence in the case file indicating that the Respondent has used or made any preparation to use the disputed domain name in connection with a bona fide offering of goods or services prior to the dispute.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of proving a negative, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See [WIPO Overview 3.0](#), section 2.1.

The disputed domain name resolves to an inactive page. However, the Complainant has submitted evidence demonstrating that the DNS servers of the disputed domain name contain active MX records. Hence, the Respondent can use the disputed domain name for sending and receiving emails. Although given the opportunity, the Respondent has not rebutted the Complainant's prima facie case. The Respondent has not submitted any evidence indicating that it is the owner of any trademark or that it is commonly known by the disputed domain name. Furthermore, there is no evidence indicating that the Respondent intends to make 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.

The Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy or otherwise, any rights or legitimate interests in respect of the disputed domain name. Thus, there is no evidence in the case that refutes the Complainant's prima facie case, and the Panel concludes that the second element of the Policy has been established.

### C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) circumstances indicating that the disputed domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding disputed domain name, provided there is a pattern of such conduct; or
- (iii) circumstances indicating that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the disputed domain name has intentionally been used in an attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

As previously mentioned, the Complainant's trademark registration for ARCELORMITTAL predates the registration of the disputed domain name. Given the composition of the disputed domain name, the Panel finds it inconceivable that the Respondent coincidentally registered the disputed domain name without any knowledge of the Complainant and its trademark.

Panels have found that the non-use of a domain name, such as a blank page, would not prevent a finding of bad faith under the doctrine of passive holding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (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, and (iii) the respondent's concealing its identity or use of false contact details. See [WIPO Overview 3.0](#), section 3.3.

The Panel notes that the Complainant's trademark is considered distinctive and well known according to UDRP decisions cited by the Complainant. The obvious misspelling of the Complainant's distinctive trademark indicates that the disputed domain name was intentionally registered by the Respondent to mislead the public by giving an overall impression that the disputed domain name is associated with the Complainant. Having reviewed the available record, the Panel finds that the Respondent's use of the disputed domain name for an inactive website does not prevent a finding of bad faith, particularly when considering the distinctiveness and reputation of the Complainant's trademark, and the composition of the disputed domain name. Other factors to weigh in the balance include the fact that presence of active MX records which enables email communications based on the disputed domain name, and the fact that the Respondent has not responded to the Complainant's contentions. Given the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

In the absence of any evidence to the contrary, the Panel is persuaded on the balance of probabilities that the Respondent has registered and used the disputed domain name in bad faith with the Complainant's trademark in mind. Therefore, the Panel concludes that the Complainant has established the third element 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 <arcleormital.com> shall be transferred to the Complainant.

*/Johan Sjöbeck/*

**Johan Sjöbeck**

Sole Panelist

Date: April 5, 2024