

ADMINISTRATIVE PANEL DECISION

Arcelormittal v. Beata Brekiesz, arcelormittal.com
Case No. D2024-2182

1. The Parties

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

The Respondent is Beata Brekiesz, arcelormittal.com, United States of America.

2. The Domain Name and Registrar

The disputed domain name <ercelomittal.com> (the “Domain Name”) is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 28, 2024. On May 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 29, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Arcelormittal.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 5, 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 June 5, 2024.

The Center verified that the Complaint [together with the amendment to the Complaint/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 June 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 27, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 1, 2024.

The Center appointed Wolter Wefers Bettink as the sole panelist in this matter on July 8, 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 is one of the largest steel producing company in the world and is a market leader in steel for use in automotive, construction, household appliances and packaging, with 58.1million tons crude steel made in 2023. It holds sizeable captive supplies of raw materials and operates extensive distribution networks.

The Complainant is the owner of the international trademark n° 947686 ARCELORMITTAL registered on August 3, 2007 (the "Trade Mark"). The Complainant also owns a number of domain names, including the domain name <arcelormittal.com> registered since January 27, 2006.

The Domain Name was registered on May 27, 2024, and resolves to a web page under construction.

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 Domain Name on the following grounds.

The Complainant states that the Domain Name is confusingly similar to the Trade Mark.

The misspelling of the Trade Mark (i.e. the substitution of the letter "a" by the letter "e" and the deletion of the letter "r") is characteristic of a typo squatting practice intended to create confusing similarity between the Trade Mark and the Domain Name. The addition of the generic Top-Level Domain ("gTLD") ".com" does not change the overall impression of the Domain Name as being connected to the Trade Mark and does not prevent the likelihood of confusion between the Domain Name and the Trade Mark.

The Respondent has no rights or legitimate interests in respect of the Domain Name. While it is identified in the WhoIs as "ARCELORMITTAL.COM" the Respondent is not known to the Complainant and is not affiliated with the Complainant in any way. The Complainant does not carry out any activity for, nor has any business with the Respondent and has not licensed or authorized the Respondent to make any use of the Trade Mark, or apply for registration of the Domain Name by the Respondent. Therefore, the Respondent uses the identity of the Complainant in order to increase the likelihood of confusion with the Trade Mark.

Moreover, the Domain Name is a typosquatted version of the Trade Mark in an attempt to take advantage of Internet users' typographical errors which also evidences that the Respondent lacks rights and legitimate interests in the Domain Name. In addition, the Domain Name resolves to a website under construction which shows that the Respondent did not make any use of the Domain Name since its registration, confirming that the Respondent has no demonstrable plan to use the Domain Name.

The Domain Name was also registered and is being used in bad faith.

Given the distinctiveness of the Trade Mark and the Complainant's reputation, it is reasonable to infer that the Respondent has registered the Domain Name with full knowledge of the Trademark. This is also evidenced by the fact that the Respondent has identified itself as "ARCELORMITTAL.COM".

Moreover, the misspelling of the Trade Mark in the Domain Name was intentionally designed to create confusing similarity with the Trade Mark.

Furthermore, the Domain Name resolves to a website under construction 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, an infringement of the Complainant's rights under trademark law, or an attempt to attract, for commercial gain, Internet users to his own website, by creating a likelihood of confusion with the Trade Mark as to the

source, sponsorship, affiliation or endorsement of the Respondent's website. Finally, although the Domain Name appears to be unused, it has been set up with MX records which suggests that it may be actively used for email purposes.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

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 Trade Mark and the Domain Name (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7).

The Complainant has shown that it has registered rights in the Trade Mark. The Domain Name is confusingly similar to the Trade Mark as it incorporates ARCELORMITTAL, of which the Trade Mark consists, in its entirety, be it with a misspelling consisting of an "e" instead of the initial letter "a" and the missing of the second letter "r". As the Domain Name consists of a common, obvious, or intentional misspelling of the Trade Mark, this does not affect the confusing similarity of the Domain Name to the Trade Mark for purposes of the first element (see [WIPO Overview 3.0](#), section 1.9 and, inter alia, *Allianz SE v. WhoisGuard Protected, WhoisGuard, Inc. / Azir Malik*, WIPO Case No. [D2019-2511](#)). The gTLD ".com" is typically disregarded under the confusing similarity test, since it is a technical registration requirement (see [WIPO Overview 3.0](#), section 1.11.1). Therefore, the Panel finds that the Domain Name is confusingly similar to the Trade Mark in which the Complainant has rights and that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Based on the evidence and the undisputed submissions of the Complainant, the Panel concludes that the Respondent has not received the Complainant's consent to use or register the Trade Mark as part of the Domain Name, is not commonly known by the Domain Name and has not acquired trade mark rights in the Domain Name. As the Domain Name does not resolve to an active website, there is no evidence that the Domain Name is used for a bona fide offering of goods or services, or a legitimate noncommercial or fair use.

In view of the above, the Panel concludes that the Complainant has established that the Respondent has no rights or legitimate interests in the Domain Name.

C. Registered and Used in Bad Faith

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name the Respondent was or should have been aware of the Trade Mark, since:

- the Respondent's registration of the Domain Name occurred seventeen years after the Complainant registered the Trade Mark;
- the ARCELORMITTAL mark is not a dictionary term, nor a term of which it is likely that a registrant would spontaneously think at the time of registration of the Domain Name;
- the Respondent identified itself as "ARCELORMITTAL.COM" (which corresponds to the Complainant's domain name) in the domain name register;
- a simple trade mark register search, or even an Internet search, prior to registration of the Domain Name in its name would have informed the Respondent of the existence of the Trade Mark.

With regard to bad faith use, the fact that the Domain Name at this stage does not appear to resolve to an active website does not imply a lack of bad faith. As set out in [WIPO Overview 3.0](#), section 3.3, the consensus view is that the apparent lack of so-called active use (e.g., to resolve to a website) of a 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 (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#) and *HUGO BOSS Trade Mark Management GmbH & Co. KG, HUGO BOSS AG v. Dzianis Zakharenka*, WIPO Case No. [D2015-0640](#)). In accordance with this UDRP jurisprudence, a UDRP panel must examine all the circumstances of the case to determine whether a respondent is acting in bad faith.

In this case, the Panel finds that the following circumstances together are found to be indicative of bad faith use of the Domain Name:

- the probability that the Respondent was aware of the Complainant's rights in the Trade Mark;
- the non-dictionary nature of the mark ARCELORMITTAL incorporated in the Domain Name, such that the Respondent cannot claim to have accidentally registered a domain name that happens to correspond to the Trade Mark;
- the lack of a formal Response of the Respondent;
- the provision as the registrant organization for the Domain Name of the Complainant's domain name <arcelormittal.com>.

Therefore, the Panel concludes that the Domain Name has been registered and is being used in bad faith.

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 <ercelomittal.com> be transferred to the Complainant.

/Wolter Wefers Bettink/

Wolter Wefers Bettink

Sole Panelist

Date: July 22, 2024