

## **ADMINISTRATIVE PANEL DECISION**

**Arcelormittal (SA) v. 厦门镍可金属有限公司 (Xiamen Nickel limited)**  
**Case No. D2023-0273**

### **1. The Parties**

The Complainant is Arcelormittal (SA), Luxembourg, represented by Nameshield, France.

The Respondent is 厦门镍可金属有限公司 (Xiamen Nickel limited), China, represented by 北京隆安 (厦门) 律师事务所, China.

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

The disputed domain name <arcelormittal.vip> is registered with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn) (the "Registrar").

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on January 23, 2023. On January 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 28, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on January 30, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On January 28, 2023, the Respondent sent an email in English and Chinese enquiring about the proceeding. The Complainant filed an amended Complaint in English on January 30, 2023.

On January 30, 2023, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 30, 2023, the Complainant submitted its request that English be the language of the proceeding. On the same day, the Center received three emails in Chinese from the Respondent requesting that Chinese be the language of the proceeding.

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 in Chinese and English of the Complaint, and the proceeding commenced on February 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was February 21, 2023. The Response was filed in Chinese with the Center on February 17, 2023.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on February 24, 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**

##### **A. Complainant**

The Complainant is a company headquartered in Luxembourg and operating globally under the trade mark ARCELORMITTAL (the "Trade Mark"). The Complainant is one of the largest steel manufacturers in the world, manufacturing steel in 16 countries, with customers in 155 countries, and 157,909 employees globally in 2021.

The Complainant is the owner of international registration No. 947686 for the Trade Mark (with designation including China), registered on August 3, 2007.

The Complainant has also registered and used the domain name <arcelormittal.com> since January 27, 2006 in respect of its corporate website.

##### **B. Respondent**

The Respondent is a company headquartered in Xiamen, Fujian, China.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on January 16, 2023.

##### **D. Use of the Disputed Domain Name**

The disputed domain name has not been used or resolved to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant contends that the disputed domain name is identical or confusingly similar to the Trade Mark; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and the disputed domain name has been registered and is being used in bad faith.

##### **B. Respondent**

The Respondent contends that the Complainant has not provided evidence of its legal rights in the Trade Mark; and the Complainant has not provided evidence that it has rights in the Trade Mark in China. The Respondent does not recognise the authenticity and validity of the Complainant's Trade Mark and domain name. The Respondent also contends that the coexistence of the disputed domain name and the Complainant's Trade Mark will not cause confusion amongst the public.

The Respondent asserts rights and legitimate interests in the disputed domain name, on the basis of its long-term strategy to enter the online novel industry. The Respondent claims that the disputed domain name has special significance for the Respondent, as it represents the conglomeration of the names of four protagonists in a novel created by the Respondent – namely “arce” (阿策), “lor” (罗), “mitt” (米特) and “al” (阿尔).

The Respondent contends that, before its receipt of the Complaint herein, it had never heard of the Complainant and it was not aware of the Complainant’s rights in the Trade Mark. Although the Respondent accepts that it has not to date made any use of the disputed domain name, the Respondent contends that it intends to use the disputed domain name in respect of its online novel business. The Respondent denies any bad faith registration or use of the disputed domain name, and argues its intended use of the disputed domain name will not have any effect on the Complainant and its business, as the Complainant operates mainly in the iron and steel industry.

The Respondent seeks a finding of reverse domain name hijacking (“RDNH”), essentially on the grounds the Respondent has registered the disputed domain name through legal means, the Respondent has never harmed the interests of the Complainant, and the Complainant has no right to prevent third parties from registering domain names containing the Trade Mark.

## **6. Discussion and Findings**

### **6.1 Preliminary Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to an undue burden being placed on the Parties and undue delay to the proceeding (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.5.1).

The Complainant has requested that the language of the proceeding be English for the following reasons:

- (i) English is the language most widely used in international relations and is one of the working languages of the Center;
- (ii) the disputed domain name is formed by words in Roman characters (ASCII) and not in Chinese script;
- (iii) the use of Chinese would require the Complainant to retain specialized translation services with costs likely to exceed the overall cost of the proceeding and would therefore impose an undue burden on the Complainant; and
- (iv) although the Complaint has been filed in English, the Center has communicated with the Respondent in Chinese and has given the Respondent the opportunity to respond in Chinese.

The Respondent initially corresponded with the Center in English and Chinese, and did not at that time make any request regarding the language of the proceeding. In its subsequent Chinese language email communications with the Center, the Respondent asserted that it could only understand Chinese, and requested that the language of the proceeding be Chinese. The Respondent subsequently filed its Response in Chinese.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time, and costs (see [WIPO Overview 3.0](#), section 4.5.1).

The Respondent's initial email communication with the Center demonstrates proficiency in the English language. Furthermore, notwithstanding the Respondent's subsequent indication that it could only understand Chinese, the Panel notes the Respondent has nonetheless been able to file its substantive Response, albeit in Chinese; and that all of the Center's communications with the Parties have been sent in both English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel determines that it will accept the filing of the Response in Chinese, and render this Decision in English.

## **6.2 Substantive Elements of the Policy**

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

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

The Panel finds that the Complainant has provided sufficient evidence to demonstrate its rights in the Trade Mark acquired through use and registration, notwithstanding the Respondent's contentions to the contrary. These rights include the Complainant's international Trade Mark registration, which designates China; and the evidence of the Complainant's widespread use of its Trade Mark worldwide. The Panel notes also, in any event, that where a complainant's trade mark is valid is not considered relevant to panel assessment under the first element (see [WIPO Overview 3.0](#), section 1.1.2).

Disregarding the generic Top-Level Domain ("gTLD") ".vip", the disputed domain name is identical to the Trade Mark.

The Panel therefore finds that the disputed domain name is identical to the Trade Mark.

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

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable 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; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trademark or service mark 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 or service mark at issue.

The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. On the contrary, the Respondent's passive holding of the disputed domain name underscores its lack of rights or legitimate interests in the disputed domain name.

The Panel is not convinced by the Respondent's novel arguments as to the genesis of the disputed domain name. There is no evidence before the Panel in this regard (indeed, no evidence has been filed together with the Response). In any event, the Panel notes that the correct pinyin Romanization for each of the Chinese characters relied upon by the Respondent (阿策, 罗, 米特, and 阿尔) is, respectively, "ace", "luo", "mite" and "aer" – not "arce", "lor", "mitt" and "al" as inventively contended by the Respondent. Furthermore, whilst it remains possible that a novel could be published containing four protagonists with such names, the Panel notes that those particular combinations of characters are not commonly used for personal names in Chinese, and the Respondent has failed to adduce any evidence in respect of its alleged novel and the four protagonists therein. In all the circumstances, the Panel finds the Respondent's contentions unconvincing, particularly in circumstances where the particular combination of letters is identical to the Complainant's distinctive Trade Mark.

The Panel would note also that the name of the Respondent suggests that it operates in the metal industry, which belies the Respondent's assertion that it had never heard of the Complainant prior to receipt of the Complaint.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In addition, the Panel notes the nature of the disputed domain name, which carries a high risk of implied association (see [WIPO Overview 3.0](#), section 2.5.1).

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel, therefore, finds that the Respondent lacks rights or legitimate interests in the disputed domain name.

### **C. Registered and Used in Bad Faith**

Given (i) the reputation of the Complainant and of its Trade Mark in relation to the global steel industry; (ii) the distinctiveness of the Trade Mark; (iii) the fact the Trade Mark has no meaning in the Chinese language; (iv) the fact the disputed domain name is identical to the Trade Mark; (v) the fact the Respondent's name suggests it apparently operates in the metal industry; (vi) the lack of any substantiated credible explanation from the Respondent; and (vii) the Respondent's unconvincing and incredible bare assertions in the Response, the Panel finds, in all the circumstances, that the requisite element of bad faith has been made out.

Furthermore, the Respondent's non-use or passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy (see [WIPO Overview 3.0](#), section 3.3).

The Panel considers, in all the circumstances and despite the Respondent's assertion to the contrary, the Respondent was most likely aware of the Complainant's Trade Mark at the time it registered the disputed domain name, given in particular the well-known nature of the Complainant's Trade Mark in the steel industry and the fact the disputed domain name is identical to the Trade Mark. The Panel finds accordingly that, in light of the inherently misleading nature of the disputed domain name, there cannot be any actual or contemplated good faith use of the disputed domain name by the Respondent.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

#### **D. Reverse Domain Name Hijacking**

Paragraph 15(e) of the Rules provides that, if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”.

RDNH is furthermore defined under the Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”. (see [WIPO Overview 3.0](#), section 4.16).

The Complainant has succeeded in obtaining the transfer of the disputed domain name in this proceeding.

The Respondent’s request for a finding of RDNH herein is entirely devoid of merit and is refused.

#### **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 <arcelormittal.vip> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: March 10, 2022