

## **ADMINISTRATIVE PANEL DECISION**

Arcelormittal v. Johnson David

Case No. D2023-2478

### **1. The Parties**

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

The Respondent is Johnson David, Greece.

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

The disputed domain name <acrelormittals.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 in English with the WIPO Arbitration and Mediation Center (the "Center") on June 7, 2023. On June 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 9, 2023 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 in English on June 12, 2023.

On June 9, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On June 12, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on 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 English and Japanese of the Complaint, and the proceedings commenced on June 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 6, 2023.

The Center appointed Keiji Kondo as the sole panelist in this matter on July 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

The Complainant is a company specialized in steel producing, and doing business around the world. The Complainant is one of the largest steel producing companies in the world and is a market leader in steel for use in automotive, construction, household appliances and packaging.

The Complainant owns the following international trademark registration:

- The international trademark registration for ARCELORMITTAL, No. 947686, registered on August 3, 2007.

The disputed domain name <acrelormittals.com> was registered on June 5, 2023. It is inactive, but MX servers are configured for the disputed domain name.

#### 5. Parties' Contentions

##### A. Complainant

The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (Policy, Paragraph 4(a)(i); Rules, Paragraphs 3(b)(viii), (b)(ix)(1)).

The Complainant states that the disputed domain name <acrelormittals.com> is confusingly similar to its trademark ARCELORMITTAL. The obvious misspelling of the Complainant's trademark ARCELORMITTAL (*i.e.*, the inversion of the letter "R" and the letter "C" and the addition of the letter "S") 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. Please see *ArcelorMittal (Société Anonyme) v. Name Redacted*, WIPO Case No. [D2020-3457](#) <acrelormlta.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.").

Moreover, the Complainant contends that the addition of the generic Top-Level Domain ("gLTD") ".com" does not change the overall impression of the designation as being connected to the trademark ARCELORMITTAL. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain name associated.

Please see *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A*, WIPO Case No. [D2006-0451](#). ("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.")

Consequently, the disputed domain name <acrelormittals.com> is confusingly similar to the Complainant's trademark ARCELORMITTAL.

The Respondent has no rights or legitimate interests in respect of the domain name (Policy, Paragraph 4(a)(ii); Rules, Paragraph 3(b)(ix)(2)).

According to *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#), 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 disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

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.

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

Besides, the disputed domain name is inactive. Therefore, the Complainant contends that the Respondent did not make any use of the disputed domain name since the registration, and it confirms that the Respondent has no demonstrable plan to use the disputed domain name. It demonstrates a lack of legitimate interests in respect of the disputed domain name.

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 <acrelormittals.com>.

The domain name was registered and is being used in bad faith (Policy, paragraphs 4(a)(iii), 4(b); Rules, paragraph 3(b)(ix)(3)).

The Complainant contends that the disputed domain name <acrelormittals.com> is confusingly similar to its distinctive trademark ARCELORMITTAL. The Complainant further claims that it is the largest steel producing company in the world. The Complainant's trademark ARCELORMITTAL is widely known. Past UDRP panels have confirmed the notoriety of the trademark ARCELORMITTAL.

Given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the disputed domain name with full knowledge of the Complainant's trademark. Please see *ArcelorMittal SA v. Tina Campbell*, WIPO Case No. [DCO2018-0005](#) ("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 is inactive. 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.

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. Please see for instance:

- *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#);
- *CBS Broadcasting, Inc. v. Dennis Toeppen*, WIPO Case No. [D2000-0400](#).

Besides, MX servers are configured, which suggests that it may be actively used for email purposes. On those facts, the Complainant contends that the Respondent has registered the disputed domain name <acrelormittals.com> and is using it in bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

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

The Complaint was filed in English, while the Complainant admits that the language of the Registration Agreement is Japanese to the best of the Complainant's knowledge. The Registrar has confirmed that the language of the Registration Agreement for the disputed domain name is Japanese.

On June 9, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On June 12, 2023, the Complainant submitted a request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

Considering the following circumstances, the Panel, exercising its authority to determine the language of the proceeding under paragraph 11(a) of the Rules, has decided English as the language of the proceeding:

- the Complaint was filed in English;
- the Complainant is a company in Luxembourg, and represented by a French law firm;
- the Respondent's address is in Greece;
- the Complainant has submitted its request that English be the language of the proceeding, but the Respondent did not comment on the language of the proceeding;
- the Respondent did not reply to the Complainant's contentions in any manner; and
- ordering the translation of the Complaint would only result in extra delay of the proceeding and additional cost for the Complainant.

### **6.2. Substantive Issues**

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

The first element functions primarily as a standing requirement. In this case, the disputed domain name is <acrelormittals.com>. On the other hand, the Complainant has an international trademark registration for the trademark ARCELORMITTAL.

Since it is well-established that the gTLD ".com" is not relevant in the appreciation of confusing similarity, the disputed domain name is confusingly similar to the Complainant's trademark. The inversion of "r" and "c" in the second and third letters in "ARCELOR" and addition of "s" at the end of "MITTAL" are characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name.

Accordingly, paragraph 4(a)(i) of the Policy is satisfied.

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

The Respondent's name, Johnson David, is in no way similar to the disputed domain name, nor is it similar to the Complainant's trademark ARCELORMITTAL. It is inconceivable that the Respondent has been commonly known by the disputed domain name.

The disputed domain name is inactive, and the Respondent did not reply to the Complainant's contentions. Had the Respondent intended and prepared to use the disputed domain name in connection with a *bona fide* offering of goods or services, or a legitimate noncommercial or fair purpose, the Respondent should have

replied to the Complaint. Therefore, inactiveness of the disputed domain name and failure by the Respondent to reply to the Complainant's contentions and provide relevant evidence lead the Panel to conclude that the Respondent did not intend to use the disputed domain name either in connection with a *bona fide* offering of goods or services, or for noncommercial or fair purpose.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

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

The Complainant is a well-known company, and its international trademark registration of ARCELORMITTAL was registered in 2007, well before the disputed domain name was registered in June 2023. Therefore, it is inconceivable that the Respondent did not know the Complainant and its trademark when it registered the disputed domain name.

Furthermore, the obvious typosquatting practice employed by the Respondent in registering the disputed domain name demonstrates that the Respondent knew and targeted the Complainant.

Therefore, the Panel concludes that the disputed domain name has been registered in bad faith.

Moreover, for the following reasons, the Panel further finds that "passive holding" or non-use of the disputed domain name supports a finding of bad faith use in this case.

First, the Complainant is a well-known company, and its trademark is widely recognized as representing the goodwill of the Complainant. Second, the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good-faith use. Third, under the circumstances of the case, there would be no plausible good faith use to which the disputed domain name might be put. Finally, configuration of MX servers for the disputed domain name suggests the Respondent has intended to use the disputed domain name as part of an email address, which the Respondent could intend to use for activities such as phishing.

Therefore, the Panel concludes that the disputed domain name is being used in bad faith.

Accordingly, paragraph 4(a)(iii) of the Policy is satisfied.

## **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 <acrelormittals.com> be transferred to the Complainant.

*/Keiji Kondo/*

**Keiji Kondo**

Sole Panelist

Date: August 7, 2023