

ADMINISTRATIVE PANEL DECISION

Arcelormittal v. Katie Park, organization
Case No. D2023-4828

1. The Parties

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

The Respondent is Katie Park, organization, United States of America.

2. The Domain Name and Registrar

The disputed domain names <arcelormittql.com> and <qrcelormittql.com> are registered with Wix.com Ltd. Wix.com Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 21, 2023. On November 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 28, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Wix.com Ltd.) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 on the same day.

The Center verified that the Complaint, together with the amendment to the 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 November 30, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 20, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 21, 2023.

The Center appointed Ada L. Redondo Aguilera as the sole panelist in this matter on December 28, 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 an international steel company with its headquartered in Luxembourg.

The Complainant is one of the largest steels producing company in the world and is one of the markets leaders in steel for use in automotive, construction, household appliances and packaging with 59 million tons crude steel made in 2022. Also, the Complainant holds sizeable captive supplies of raw materials and operates extensive distribution network.

The Complainant as a steel producer, is the main manufacturer of steel in 18 countries around the world. It employs over 191,000 employees globally, serving customers in 160 countries.

The Complainant has specialized in steel producing and is the owner of the well-known trademark ARCELORMITTAL, which is widely used throughout the world for a steel producing company and its products.

The Complainant presented in this case evidence of the ownership of the trademark ARCELORMITTAL such as the International trademark registration No. 947686, registered on August 3, 2007, for goods and services in the classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42. This trademark has been duly renewed and is in force.

The Complainant also owns a number of domain names, including <arcelormittal.com> which was registered on January 26, 2006, in order to promote its products and services on Internet.

The disputed domain names were registered on November 17, 2023, and both resolve to error pages.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of both disputed domain names. Notably, the Complainant contends that it is the owner of the trademark ARCELORMITTAL and that it has a strong reputation for the goods and business under its trademark. Also, the Complainant contends that its trademark ARCELORMITTAL has a worldwide presence. Additionally, the Complainant asserts that the disputed domain names are both confusingly similar to the ARCELORMITTAL trademark, and both disputed domain names must be also considered as examples of typosquatting.

The Complainant further contents that the Respondent has no rights or legitimate interests in the disputed domain names, and that both disputed domain names were registered and are being used in bad faith. Also, the Complainant refers to a number of previous UDRP panel decisions where typosquatting of their trademark has been found and where the trademark ARCELORMITTAL well-known status was also confirmed. Finally, the Complainant request the transference of the disputed domain names.

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 a complainant to prove each of the following three elements in order to obtain an order that the disputed domain names be transferred or cancelled:

- (i) the disputed domain names are 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 respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement.

Based on the available record, the Panel finds the Complainant has shown rights in respect of their trademark for the purposes of the Policy and according to the section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

The Panel finds that the Complainant’s trademark is recognizable within both of the disputed domain names. Accordingly, both disputed domain names are confusingly similar to the mark, for the purposes of the [WIPO Overview 3.0](#), section 1.7. “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. 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.)”

The Panel finds that both disputed domain names are misspelled versions of the Complainant’s trademark ARCELORMITTAL. In the disputed domain name <arcelormittql.com> the letters “i” and “a” are substituted by the letters “l” and “q” and in the disputed domain name <qrcelormittql.com> the letter’s “a” and “i” are substituted by the letters “q” and “l”. This type of misspelling is characteristic of a typosquatting practice, that is intended to create confusing similarity between the Complainant’s trademark and the disputed domain names. Such misspelling variations does not prevent a finding of confusing.

According to section 1.9 of [WIPO Overview 3.0](#) “[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.” Previous UDRP panels have found that the slight spelling variations does not prevent a domain name from being confusing similar to a complainant’s trademark, see *ArcelorMittal (Société Anonyme) v. Name Redacted*, WIPO Case No. [D2020-3457](#); “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”.

Additionally, it is well established that the generic Top-Level Domain “gTLD” (in this case “.com”) is generally disregarded when considering whether a disputed domain name is confusingly similar to the trademark in which the complainant has rights. Section 1.11.1 of the [WIPO Overview 3.0](#) states that “the applicable Top Level Domain (“TDL”) in a domain name (e.g., “.com”, “.club.”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusion similarity test”.

Accordingly, the Panel finds that the disputed domain names are confusingly similar to the Complainant’s trademark, due to the fact that both consist of a misspelling of the Complainant’s trademark ARCELORMITTAL.

Based on the available record, the Panel finds 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. See [WIPO Overview 3.0](#), section 2.1.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain names, that the Respondent is not commonly known by the disputed domain names 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. Furthermore, the Complainant has not granted the Respondent any license nor any authorization to make any use of the Complainant’s trademark ARCELORMITTAL or registration of the disputed domain names.

Having reviewed the available record, the Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names, such as those enumerated in the Policy or otherwise.

Therefore, this Panel finds that the Respondent is not making any *bona fide* use, neither commercial nor noncommercial, of the same, being emphasized that both disputed domain names point to error pages. Moreover, MX records were set up for the disputed domain names. Such use of the disputed domain names does not amount to a *bona fide* offering of goods or services, or to a legitimate noncommercial or fair use.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In this Panel's view, the typosquatting, as mentioned above, reflected in both disputed domain names establish bad faith registration. Moreover, UDRP panels have previously found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith, see [WIPO Overview 3.0](#), section 3.1.4

According to the paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. See section 3.2.1 of the [WIPO Overview 3.0](#).

In the present case, both disputed domain names points to error pages and can be considered as not active. However, from the inception of the UDRP, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. The [WIPO Overview 3.0](#), section 3.3 establishes that "[...]panelists have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. While 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 (noted to be in breach of its registration agreement) and the implausibility of any good faith use to which the domain name be put." Having reviewed the available record, the Panel finds the Respondent's registration and non-use of the disputed domain names constitutes bad faith

Based on the available record, the Panel finds 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 names, <arcelormlittql.com> and <qrceleormittql.com>, be transferred to the Complainant.

/Ada L. Redondo Aguilera/

Ada L. Redondo Aguilera

Sole Panelist

Date: January 11, 2024