

## **ADMINISTRATIVE PANEL DECISION**

Arcelormittal v. KATIE PARK, organization  
Case No. D2023-5081

### **1. The Parties**

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

The Respondent is KATIE PARK, organization, United States of America (“United States”).

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

The disputed domain name <arcelornitta.com> is registered with Wix.com Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 6, 2023. On December 6, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 7, 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 (Wix.com Ltd.) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 8, 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 December 11, 2023.

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 December 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 5, 2024.

The Center appointed Philippe Gilliéron as the sole panelist in this matter on January 17, 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 manufacturing companies in the world and the market leader in steel with regards to its use in automotive, construction, household appliances, and packaging with 59 million tons of crude steel made in 2022.

The Complainant owns the International trademark registration No. 947686 for ARCELORMITTAL, registered on August 3, 2007, in classes 6, 7, 9, 12, 19, 21, 39, 40, 41 and 42 of the Nice Classification.

The Complainant further owns an important domain names portfolio including the domain name <arcelormittal.com>, that was registered on January 27, 2006.

The disputed domain name was registered on November 30, 2023. The disputed domain name resolves to a registrar parked page. Mail exchange ("MX") servers are configured.

#### **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.

Notably, the Complainant contends that the disputed domain name is confusingly similar to its trademark ARCELORMITTAL as it consists of an obvious misspelling of the Complainant's trademark and is characteristic of a typosquatting practice.

The Complainant then affirms that the Respondent has no rights or legitimate interests in the disputed domain name as it is not known under that name, is not related in any way with the Complainant and has never been authorized or licensed by the latter to use the trademark ARCELORMITTAL.

The Complainant finally is of the view that the disputed domain name was registered and is being used in bad faith. Taking into account the worldwide reputation of the trademark ARCELORMITTAL, the Respondent was obviously aware of the Complainant's trademark when it registered the disputed domain name. The registration of the disputed domain name based upon a typosquatting practice that points to an error page and where MX servers are configured further evidence the usage in bad faith.

##### **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."

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements to obtain an order that the disputed domain name should be cancelled or transferred:

- (i) the disputed domain name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of 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**

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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name, which is considered a leading to a confusing similarity between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7. Furthermore, panels have further priorly agreed that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered to be confusingly similar to the relevant mark for purposes of the first element. [WIPO Overview 3.0](#), section 1.9.

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

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. 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 name such as those enumerated in the Policy or otherwise.

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.

Bad faith requires the Respondent to be aware of the Complainant's trademarks. In the present case, the Complainant's trademark ARCELORMITTAL enjoys a strong reputation (*Arcelormittal SA v. Tina Campbell*, WIPO Case No. [DCO2018-0005](#)). Taking into account the fact that the disputed domain name consists of a misspelling of the Complainant's trademark which cannot be the result of a hazard, there is no doubt in the Panel's opinion that the Respondent was well aware of the Complainant's trademark when it registered the disputed domain name.

The registration of a disputed domain name consisting of a spelling mistake of a well known trademark in itself evidences a usage in bad faith as one cannot reasonably provide any explanation as to why such a registration would have taken place in contemplation of a use in good faith that would not infringe upon the Complainant's trademark rights.

Panels have further found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. 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 (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. This is all the more true than the configuration of MX servers may be actively used for email and phishing purposes.

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 name <arcelornnitta.com> be transferred to the Complainant.

*/Philippe Gilliéron/*

**Philippe Gilliéron**

Sole Panelist

Date: January 25, 2024