Panel Decision for dispute CAC-ADREU-008530

Case number	CAC-ADREU-008530
Time of filing	2023-08-22 09:44:54
Domain names	mital.eu

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	ARCELORMITTAL

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Ireneusz Bachurski Przedsiębiorstwo INFO-BI

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There were no other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is ARCELORMITTAL, a company registered under the law of Luxembourg. The Complainant is the largest steel producing company in the world and is the market leader in steel for use in automotive, construction, household appliances and packaging with 59 million tons crude steel made in 2022. It holds sizeable captive supplies of raw materials and operates extensive distribution networks in many countries worldwide.

The Respondent – Mr. Ireneusz Bachurski - Przedsiębiorstwo INFO-BI – is a physical person, domiciled in Żywiec, Bracka 16/11, 34-300, Poland. In the herein case it was not established whether If the Respondent operates as an entrepreneur or conducts any kind of business activity in other forms.

The disputed domain <mital.eu> was registered on 6 June 2023. Under the disputed domain there are no particular information indicating on the Respondent nor his business activity. That domain resolves to a parking page where is offered for sale for 4500€.

On 13 June 2023 the Complainant filed its Complaint, and the receipt of the Complaint was acknowledged by the Czech Arbitration Court (CAC) on 13 June 2023. Also, on 13 June 2023 CAC issued a request for EURid verification, due to several issues that needed to be verified:

- that the specified domain name is registered with the above-mentioned Registrar;
- that the Respondent is the current registrant of the domain name;
- full contact details (i.e., postal addresses, telephone number(s), facsimile number(s), e-mail address(es) that are available in your WHOIS database for the domain name registrant, technical contact, administrative contact and billing contact, for the above domain name;
- that the domain name will remain locked during the pending ADR Proceeding.

Apart from that, EURid was requested to indicate the specific language of the registration agreement as used by the registrant for each domain name.

On 14 June 2023 EURid provided the requested verification od the disputed domain name´s data. The CAC requested the Complainant to amend the complaint in accordance with the provided registrant data. On the same day the Complainant provided the amended version of the Complaint, that allowed CAC to commence the proceedings in the case at hand on 15 June 2023. As for the language of the proceedings, English language was selected.

The Respondent did not respond to the communication, and failed to comply with the deadline indicated in the Notification of Complaint and Commencement of ADR Proceeding.

On 2 August 2023 the Panel, having filed the necessary Statement of Acceptance and Declaration of Impartiality and Independence had been appointed.

A. COMPLAINANT

The Complainant underlines that it is a well-known company, operating in many countries with a renowned position worldwide in terms of steel producing.

Complainant has indicated on the following claims towards the Respondent in the case at hand:

1) The registered domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law;

2) The Respondent has no rights or legitimate interests in respect of the domain name;

3) The domain name has been registered or is being used in bad faith.

Addressing the first claim, the Complainant indicated that is the owner of many trademarks' rights, registered under regional and international jurisdictions, containing the name or comprising of 'mittal' well before the registration of the disputed domain name 'mital.eu'. Complainant specifically indicated on the following:

- The European trademark MITTAL® n°003975786 [word] registered on 1 December 2005;

- The International trademark MITTAL® n° 1198046 [word] registered on 5 December 2013.

The Complainant also submitted proof for ownership of numerous domain names portfolio containing the same wording MITTAL®, such as the domain name <mittal.eu> registered since February 23, 2010, <arcelormittal.com> registered since January 27, 2006 and <mittal.dev> registered since March 11, 2019.

The Complainant has become aware of the fact that the Respondent has registered domain name <mital.eu> which is almost identical to his earlier domains. Complainant indicated that the only difference between his designations and the disputed domain resides in one letter. Differences between those names are to be considered minimal, irrelevant to the assessment of the matter in the case at hand. It has to be noted that in terms of phonetics, those domains would be without a doubt pronounced identically by the majority of relevant public.

Complainant also stated that the deletion of the letter "T" in the name of the Disputed domain is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the Disputed domain name. In support of that argument the Complainant has indicated on the earlier a decision by the WIPO Case No. D2020-3457, ArcelorMittal (Société Anonyme) v. Name Redacted Mutual Jurisdiction <arcelormltal.com> issued in other proceedings in relation to its company name (composing of element MITTAL), where the panel stated that the disputed domain name, which differed from the earlier trademark by just two letters, 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.

Complainant indicated that the addition of the ccTLD ".EU" does not change the overall impression of the designation as being connected to the Complainant's trademark. Furthermore, Complainant indicated, that the disputed domain name is similar to the point of confusion with the earlier rights of the Complainant, which may result in, inter alia, potential association or affiliation of the disputed domain with the Complainant.

In accordance to the second claim, Complainant stated that the Respondent has no right or legitimate interest in respect of the disputed domain name.

in that regard, Complainant indicated that due to his best knowledge Respondent was not well known or even recognised either locally, nationally or internationally as a provider of certain goods or services under the disputed domain name. Short period of time between registration to the filing of the complaint did not allow the respondent or his domain to acquire popularity or recognition of the Respondent or his domain.

Moreover, Complainant indicated, that the Respondent was not affiliated with nor authorized by the Complainant in any way. The Complainant contended that the Respondent had no rights or legitimate interests in respect of the disputed domain name. The Complainant did not carry out any activity for, nor had any business with the Respondent. Neither license nor authorization had been granted to the Respondent to make any use of the Complainant's trademark MITTAL®, or to apply for registration of the disputed domain name by the Complainant.

Complainant also claimed that the disputed domain name is a typosquatted version of the trademark MITTAL. In the complaint, the Complainant provided a definition of Typosquatting, which is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can evidence that a respondent lacks rights and legitimate interests in the domain name.

In addition to the above, Complainant also provided evidence for the fact that the disputed domain name resolves to a parking page where the disputed domain name is offered for sale for 4500€

The Complainant contended this general offer to sell the disputed domain name evidences the Respondent's lack of rights or legitimate interest.

Due to the evidences provided by the Complainant, he argued that it is safe to assume that the Respondent did not have any kind of rights to the name 'mittal', nor legitimate interests in registration.

In accordance to the third claim, Complainant contended that the Respondent has registered and is using the disputed domain names in bad faith.

In support of that argument, the Complainant has referred to the distinctive nature of his earlier designations, which was confirmed by, inter alia, following earlier UDRP panels:

- WIPO Case No. D2018-1086, ArcelorMittal S.A. v. Registrant of lakshmimittal.org, c/o WHOIStrustee.com Limited / Zeus Holding Market Ltd. ("The Domain Name wholly incorporates a well-known mark [MITTAL]");

- WIPO Case No. D2010-2049, Arcelormittal v. Mesotek Software Solutions Pvt. Ltd. ("the Complainant's marks MITTAL and MITTAL STEEL have been widely used and are well-known.").

In accordance to that, Complainant stated that it was reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark and domain names, with intention to use the domain in expectation for Internet users searching for the Complainant's services and products would instead (either by mistake or intentionally) come across the site under the disputed domain name. In Complainants opinion the Respondent is using the disputed domain name to attract Internet users by creating a likelihood of confusion with the Complainant's earlier marks.

The Complainant claimed also that the Respondent fails to make an active use of the disputed domain name and that the Respondent has registered the disputed domain name only in order to sell it back for out-of-pockets costs, which evinces bad faith registration and use.

Due to the afore-mentioned, in Complainant´s opinion, Respondent knew or should have known that registering his domain name he infringes earlier Complainant´s rights.

Complainant contended also that the domain name was registered and is being used in bad faith by the Respondent. This, in the opinion of the Complainant, should have been taken into consideration by the Panel in all of the presented circumstances, not limiting to the actual usage of the domain in bad faith, but the bad faith of the Respondent registering the disputed domain name.

B. RESPONDENT

The respondent has not replied.

DISCUSSION AND FINDINGS

In accordance to the material collected in the case at hand, it was proven without a doubt that the Complainant had earlier rights to the name Mittal than the date of the registration of the disputed domain name. Moreover, based on the Complainant's evidence and historical description, it should be concluded that the Complainant's trademark and corresponding tradename are distinctive and relatively well-known.

The Respondent (residing in Poland) registered and used the disputed name in the disputed domain <mital.eu>, despite undeniable awareness of the popularity and reputation of the highly similar designation 'mittal', his trademarks and domain name. This is not altered by the fact that the contested designation is not identical to the 'mittal' designation. In the view of the herein Panel, the similarity of the compared designation is very high, which results in the risk of confusion of the users of the Internet. No particular activity on preparation or actual using the name 'mital' in the market by the Respondent were established in the herein case, justifying the registration of that name.

In accordance to that, the Panel finds that the Respondent did not have any kind of rights to the name and no particular interest in registering such name that could be derived from any rights.

In the view of the gathered evidence in the case at hand, the disputed domain was used by the Respondent primarily in order to attract Internet users by creating a likelihood of confusion with the Complainant's earlier marks, profiting from their (intended or not) entrance to the website under the disputed domain name. That practise is indeed, as the Complainant stated in the content of the Complaint, known as typosquatting constituting an infringement of another's domain rights. Website under the domain 'mital.eu' is a parking page where is offered for sale for 4500€. That practise is to be considered as an infringement of Complainant's rights, and a criminal offence, pursued by the provision of Polish law (law applicable to the Respondent).

In accordance to Article 4 (4) of Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004 (hereinafter referred to as: 'Regulation') a domain name may also be revoked, and where necessary subsequently transferred to another party, following an appropriate ADR or judicial procedure, in accordance with the principles and procedures on the functioning of the .eu TLD laid down pursuant to Article 11, where that name is identical or confusingly similar to a name in respect of which a right is established by Union or national law, and where it:

(a) has been registered by its holder without rights or legitimate interest in the name; or

(b) has been registered or is being used in bad faith.

Moreover, in accordance to the provisions of Part B(11)(e)(1)-(3) .eu Alternative Dispute Resolution Rules (hereinafter referred to as: "ADR Rules") a legitimate interest may be demonstrated where:

(1) prior to any notice of the dispute, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;

(2) the Respondent, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or European Union law;

(3) the Respondent is making legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in respect of which a right is recognised or established by national law and/or European Union law.

In the case at hand, regardless of the illegal nature of the activity of the Respondent, none of the abovementioned circumstances, indicating on the justified interest in registering and using the domain, were established. Furthermore, the disputed domain name is confusingly similar to the Complainant´s designation and should have been known by the Respondent. Moreover, the disputed domain name most probably was created in order to imitate the former, which undermines legitimacy of any kind of interests that the Respondent could have demonstrated.

Meeting of the previous conditions is deemed sufficient to decide about the transfer of the disputed domain name. The Panel nevertheless made assession of the third condition as well.

In accordance to the provision of Article Part B(11)(f)(1)-(5) ff the ADR Rules, registering or using the designation in the bad faith refers to the situations, where:

(1) Circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting or otherwise transferring the domain name to the holder of a name in respect of which a right is recognised or established by national and/or European Union law, or to a public body; or

(2) The domain name has been registered in order to prevent the holder of a name in respect of which a right is recognised or established by national and/or European Union law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) the Respondent has engaged in a pattern of such conduct; or

(ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or

(iii) there are circumstances where, at the time the ADR Proceeding was initiated, the Respondent has declared its intention to use the domain name in respect of which a right is recognised or established by national and/or European Union law or which corresponds to the name of a public body in a relevant way but failed to do so within six months of the day on which the ADR Proceeding was initiated;

(3) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

(4) the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent’s website or other online location, by creating a likelihood of confusion with a name in respect of which a right is recognised or established by national and/or European Union law, or it is a name of a public body, with such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; or

(5) the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered.

In accordance to the above it has to be noted, that the disputed domain name was registered and used in bad faith by the Respondent. Due to the evidences gathered in the proceedings, the domain <mital.eu> served primarily as a parking page with an offer for its sale for 4500€. Confusingly similar name of the disputed domain name to the distinctive and popular earlier designations of the Complainant was intended to profit from the impression that there is a relation between the disputed domain name and the Complainant. Confusion may arise also as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name.

In the opinion of the herein Panel the disputed domain name was intended to be used in such manner from the moment of its registration.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the disputed domain name <mital.eu> be transferred to the Complainant.

PANELISTS

Name	**Mariusz Kondrat**

DATE OF PANEL DECISION 2023-08-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: mital.eu

II. Country of the Complainant: Luzembourg, country of the Respondent: Poland

III. Date of registration of the domain name: 6 June 2023

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:

1. word trademark registered internationally with designation under Madrid Protocol of inter alia territory of Israel, United States, New Zeeland, Turkey, reg. No. 1198046, for the term 10 years, filed on 5 December 2013, registered on 5 December 2013 in respect of goods and services in classes 6, 40

2. word CTM, reg. No. , reg. No. 003975786, for the term 10 years, filed on 9 August 2004, registered on 1 December 2005 in respect of goods and services in classes 6, 40

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules):
1. No
2. Why:

a) No registration of any kind related to the domain name under dispute.

b) Not commonly known by the domain name.

c) The holder of a domain name is not making a legitimate and non-commercial or fair use of the domain name.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Yes
2. Why:

a) the domain name was registered primarily for the purpose of improper gains, disrupting the professional activities of the Compliant, in an attempt to impersonate the Compliant, offering the disputed domain for sale.

b) the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established by national and Community law, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name.

c) the domain name is highly similar to the name of a Complainants' company, and the Panel has not been proved to have any connection between the Respondent and the registered disputed domain name. Nor is any such connection apparent;

IX. Other substantial facts the Panel considers relevant:

None

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

None

XII. If transfer to Complainant Is Complainant eligible? Yes