

ADMINISTRATIVE PANEL DECISION

Arista Networks Inc. v. Lucy Chen
Case No. D2022-4791

1. The Parties

The Complainant is Arista Networks Inc., United States of America (“United States”), represented by Brand Enforcement Team 101 Domain, United States.

The Respondent is Lucy Chen, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <aristsa.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 14, 2022. On December 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 15, 2022, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 December 19, 2022. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 11, 2023.

The Center appointed Torsten Bettinger as the sole panelist in this matter on January 23, 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 was founded in 2004 and provides technological products and software solutions for monitoring and network detection and response worldwide, through its primary website, “www.arista.com” and has offices and delivers its computer networking services to Fortune 500 customers located across six continents.

The Complainant states, and provides documentation in support thereof, that it is the owner of the following trademark registrations (the “ARISTA Trademark”):

- European Union Reg. No. 008473721 for ARISTA (registered February 1, 2010) for use in connection with, *inter alia*, “computer hardware and software”;
- United States Reg. No. 4,893,674 for ARISTA (registered January 26, 2016) for use in connection with, *inter alia*, “computer hardware”.

The Complainant also maintains an extensive portfolio of over 100 domain names under country code Top-Level Domains (“ccTLDs”) and generic Top-Level Domains (“gTLDs”) consisting of variations of the term “arista”.

The disputed domain name was registered on September 26, 2022. The Complainant states, and provides documentation in support thereof, that the disputed domain name has been used to send an “invoice for illegitimate orders and wire payments on behalf of the Complainant’s company” that resulted in the Complainant’s customer making a wire transfer of “several hundred thousand dollars” to an unaffiliated bank account. The Complainant filed an abuse complaint with the Registrar, which appears to have suspended the disputed domain name.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has consistently and consecutively used the ARISTA trademarks for over a decade prior to the registration of the disputed domain name and that its ARISTA trademarks have become well-known to characterize the Complainant’s computer networking brand, as evidenced by its numerous registered domain names containing the term “arista” and global presence.

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant asserts that the disputed domain name is confusingly similar to its registered trademark ARISTA and argues that the Respondent is actively seeking to create confusion in the online marketplace by adding an extra letter “s” at the end of the Complainant’s trademarked term ARISTA, which is a typosquatting method that is not only used to capitalize on notorious brand recognition but also demonstrates the Respondent’s intention to confuse consumers and target the Complainant’s customers with a nearly identical domain name <arista.com>.

With regard to the Respondent having no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy, the Complainant submitted that:

- the Respondent has no rights or legitimate interests in respect of the disputed domain name because, *inter alia*, the Respondent has used the disputed domain name to invoice for illegitimate orders and wire payments on behalf of the Complainant’s company;
- the Respondent has no registered trademarks using the term ARISTA;
- the Respondent is not commonly known by the disputed domain name;
- the Respondent is using the disputed domain name to actively disrupt the Complainant’s business and tarnish the Complainant’s established trademark ARISTA; and

- the disputed domain name was solely being used to fabricate an association with the Complainant's company employees and trademarked brand name.

Finally, with regard to the disputed domain name having been registered and being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy, the Complainant argues that:

- the disputed domain name was registered and is being used in bad faith because, *inter alia*, the Respondent fraudulently used the disputed domain name, to confuse prospective customers who associate the ARISTA brand and Arista Networks corporate name into fulfilling false orders and collecting misdirected wire payments from the Complainant's customer base; and
- the Respondent was swindling the Complainant's customers through false communications and representation.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following elements:

- (i) the disputed domain name is 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns and has rights to the trademark registration for the mark ARISTA prior to the registration of the disputed domain name on September 26, 2022.

It is well-established that the test of identity or confusing similarity under the Policy is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the trademark is used or other marketing and use factors usually considered in trademark infringement cases (see sections 1.1.2 and 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

In this case, the disputed domain name contains the Complainant's mark in its entirety and only differs from the Complainant's ARISTA mark by the addition of the letter "s" between the letters "t" and "a" of the disputed domain name which obviously is an intentional misspelling of the Complainant's trademark and does not prevent the Complainant's trademark from being recognizable within the disputed domain name.

Furthermore, the specific generic Top-Level Domain ("gTLD") designation such as ".com", ".net", ".org" is not to be taken into account when assessing the issue of identity and confusing similarity, except in certain cases where the applicable top-level suffix may itself form part of the relevant trademark (see [WIPO Overview 3.0](#), section 1.11).

For the foregoing reasons the Panel concludes that the disputed domain name is confusingly similar to the Complainant's ARISTA trademark, and that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy a respondent may establish its rights or legitimate interests in the domain name, among other circumstances, by showing any of the following elements;

“(i) before any notice to you [the Respondent] of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you [the Respondent] are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant stated that the Respondent is neither affiliated with, nor authorized by the Complainant to register and use ARISTA mark, and is not commonly known by the disputed domain name.

The Complainant provided evidence that the Respondent has used the disputed domain name “to invoice for illegitimate orders and wire payments on behalf of the Complainant’s company”. These submissions are sufficient to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

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 disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent chose not to contest the Complainant’s allegations and has failed to come forward with any evidence to refute the Complainant’s *prima facie* showing that the Respondent lacks rights or legitimate interests. The Panel therefore accepts the Complainant’s submissions, that the Respondent has used the disputed domain name to invoice for illegitimate orders and wire payments on behalf of the Complainant’s company and finds that the Respondent lacks rights or legitimate interests in the disputed domain name, and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- i. circumstances indicating that the Respondent has registered or has acquired the disputed domain name primarily for the purpose of selling, renting or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of the Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name; or
- ii. the Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the Respondent has engaged in a pattern of such conduct; or
- iii. the Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

- iv. by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

The Complainant holds a trademark registration for the ARISTA trademark in various countries that predates the registration of the disputed domain name.

Given that the Complainant's ARISTA trademark is widely known and that the disputed domain name consists of an intentional misspelling of the ARISTA trademark it is difficult to conceive that the Respondent coincidentally registered the disputed domain name without knowledge of the Complainant's rights in the ARISTA mark. As the Respondent has not submitted a response, or offered any other explanation as to why the disputed domain name was registered, the Panel is satisfied that the Respondent registered the disputed domain name in bad faith.

To prove bad faith use of the disputed domain name, the Complainant provided evidence that the Respondent has used the disputed domain name to engage in a business email compromise or phishing scam to impersonate the Complainant, which resulted in one of the Complainant's customers sending "several hundred thousand dollars" to "an unaffiliated bank account".

This obviously shows that the disputed domain name has been used in bad faith by creating a likelihood of confusion under paragraph 4(b)(iv) of the Policy. (See [WIPO Overview 3.0](#), section 3.1.4, "the use of a domain name for *per se* illegitimate activity such as [...] phishing [...] is manifestly considered evidence of bad faith" and as set forth in [WIPO Overview 3.0](#), section 3.4, using a disputed domain name for "phishing", especially where "the respondent's use of the domain name [is] to send deceptive emails" for purposes such as "to solicit payment of fraudulent invoices by the complainant's actual or prospective customers" constitutes bad faith, see also, *e.g.*, *BTWN Exhibits, LLC v. Registration Private, Domains By Proxy, LLC / Ahmed Fawzy, ASM Marketing*, WIPO Case No. [D2020-0036](#) (finding bad faith where "Respondent used the Domain Name to create an email address [and] send fraudulent emails to Complainant's customers"); and *LinkedIn Corporation v. Michael Moore*, WIPO Case No. [D2022-3287](#) (finding bad faith where "Respondent used the disputed domain name as the sender domain in an email adopting the identity of an employee of Complainant, with other details intended to appear as originating with Complainant, including an invoice designed to appear as originating with Complainant (but with different payment details)"); see also *Arista Networks Inc. v. Sam Morgan*, WIPO Case No. [D2022-4352](#) (in an almost identical case scenario: "Respondent has used the Disputed Domain Name to engage in a business email compromise or phishing scam to impersonate Complainant, which resulted in one of Complainant's customers sending USD 100,000 to what Complainant has called 'an unaffiliated bank account.' This obviously shows that the Disputed Domain Name has been used in bad faith by creating a likelihood of confusion under paragraph 4(b)(iv) of the Policy").

The Panel therefore finds that the Respondent also registered and used the disputed domain name in bad faith.

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, <aristsa.com>, be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: February 6, 2023