

## **ADMINISTRATIVE PANEL DECISION**

Arista Networks Inc. v. Todd Fleckenstein, Orien Group  
Case No. D2024-0624

### **1. The Parties**

The Complainant is Arista Networks Inc., United States of America (“United States”) , represented by 101domain.com, United States.

The Respondent is Todd Fleckenstein, Orien Group, United States.

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

The disputed domain name <arista-au.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 10, 2024. On February 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 12, 2024, 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 (Information not available in Whois) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 2024, 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 February 19, 2024.

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 February 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 11, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 12, 2024.

The Center appointed Gary Saposnik as the sole panelist in this matter on March 14, 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 Arista Networks Inc. is a global computer network company and operating system. The Complainant was founded in 2004 and provides technological products and software solutions for monitoring and network detection and response worldwide. The Complainant has over a dozen offices and delivers their computer networking services to Fortune 500 customers located across six continents. Its locations include a number of locations in Australia and the United States. The Complainant has been operating in the computer networking sector for nearly two decades, with an extensive range of network switches and operating system products promoted under the brand name ARISTA.

The Complainant is the owner of trademark registrations for ARISTA since at least 2010, and provided evidence of the following marks:

- ARISTA, European Union EUTM Registration No. 008473721, registered February 1, 2010, in classes 9 and 42, for goods and services including computer hardware and software, networking hardware and software to interconnect computers, servers and storage devices, design and production of computer software for others, servicing of computer hardware and software.
- ARISTA, Australian Registration No. 1406588, registered February 2, 2011, in class 9, for goods including networking hardware being Ethernet switches to interconnect computers, servers and storage devices.
- ARISTA, United States Registration No. 4893674, registered January 26, 2016, first used in commerce in 2008, in classes 9, 41, and 42, for goods and services including computer hardware, computer network hardware, namely hubs, switches and routers for computer networks, computer software for use in connecting computer networks and services, providing of training and educational courses related to computer network hardware and software, technical support services.

The Complainant operates its primary corporate website at “www.arista.com”, which was registered on July 6, 1998. This website provides global access for online customers to their specific region to reach local consumers. The Complainant also maintains a portfolio of more than 100 domains consisting of ccTLD and gTLD variations of the “ARISTA” trademark. The list of domain names includes numerous country code domain names as well as many other New gTLD extensions. Most of these domain names were registered on May 13, 2021, and September 1, 2023. Of note is that none of the domain names provided of the ARISTA portfolio relates to an Australian country code domain name.

The Respondent registered the disputed domain name <arista-au.com> on November 1, 2023. The disputed domain name resolves to a Registrar provided parking page containing links apparently unrelated to the Complainant. The Complainant alleges that the domain name is being used to fraudulently contact Complainant’s customers posing as a legitimate employee in its collections department.

#### **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.

The Complainant contends that Respondent’s registration of the disputed domain name is considered as typosquatting and therefore confusingly similar to the Complainant’s ARISTA trademarks. The Complainant contends that the disputed domain name is confusingly similar to the Complainant’s registered ARISTA

trademark, while adding a dash plus the Australia country code “AU”. The Complainant alleges that this is evidence of intent on the part of Respondent to deceive and defraud Internet users and customers with a nearly identical domain name to its company domain name <arista.com>. Additionally, the Complainant contends that the Respondent was fraudulently contacting customers while posing as a legitimate employee of Complainant, thereby creating wrongful confusion with Complainant.

The Complainant contends that Respondent is an unauthorized party and cannot claim a legitimate interest in a domain name that contains, or is confusingly similar to the Complainant’s marks, and is not making a bona fide offering of goods or services or any legitimate non-commercial or fair use of the disputed domain name. Complainant contends that Respondent does not have any registered trademarks using the term “ARISTA”, nor does it have any legitimate connection the “ARISTA” term. The Complainant further contends that Respondent is not commonly known by the domain name.

As detailed above, the Complainant further contends that using the disputed domain name as an email address to impersonate the Complainant in furtherance of a fraudulent scheme is evidence of bad faith use. The Complainant further alleges that the addition of “-AU” to the ARISTA trademark in the disputed domain name is considered additional evidence of bad faith registration. Complainant states the Respondent was impersonating a legitimate employee of Complainant and was swindling Complainant’s customers through false communications and representation. Complainant contends that Respondent was using the disputed domain name in an email address to appear as if the sender was from the financial or accounting department from Arista Networks, and whose signature line points the correspondent to Complainant’s domain name at <arista.com>. The Complainant alleges that the disputed domain was used to mislead customers into believing Complainant has outstanding invoices on their customers’ accounts and requires immediate payment collection, thereby disrupting Complainant’s business by profiting from Complainant’s reputation and corporate relationships.

The Complainant states that Respondent is using the disputed domain name to deliberately create confusion with the Complainant’s trademark and is targeting Complainant’s customers to defraud them by misappropriating Complainant’s trademarks with inclusion of the Australian country code in an attempt to validate the domain as the legitimate Australian counterpart of Complainant’s main domain name, and in a territory where Complainant has offices and trademarks.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, “-au” may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

In the present case, the Complainant has provided evidence of prior rights in the trademark ARISTA which long preceded the Respondent’s registration of the disputed domain name. The Respondent is not connected to nor affiliated with the Complainant and has not received any license or consent, express or implied, to use the Complainant’s ARISTA trademark.

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.

Panels have held that the use of a domain name for illegal activity here, claimed as applicable to this case: phishing, impersonation/passing off of an employee of Complainant, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. The Complainant has submitted un rebutted evidence that the disputed domain name was utilized in an email address to pass off and impersonate the Complainant to secure payment of funds from unsuspecting customers.

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 the present case, the Panel notes that the Respondent registered the disputed domain name many years after the Complainant registered the ARISTA marks. The Complainant’s mark had been used worldwide, including in the United States (where the Respondent is apparently located), as well as in Australia (which is the location of the country code included in the disputed domain name). Within a short period of time after registration, the Respondent then used the disputed domain name with emails impersonating a Complainant employee, in an attempt to fraudulently obtain funds from unsuspecting customers of the Complainant.

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. [WIPO Overview 3.0](#), section 3.2.1.

Furthermore, Panels have held that the use of a domain name for illegal activity, as previously noted, for claimed use in an email address for phishing and/or impersonating/passing off to solicit payment of

fraudulent invoices by the complainant's customers constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. *Arla Foods Amba v. Michael Guthrie, M. Guthrie Building Solutions*, WIPO Case No. [D2016-2213](#)

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <arista-au.com> be transferred to the Complainant.

*/Gary Saposnik/*

**Gary Saposnik**

Sole Panelist

Date: March 29, 2024