

ADMINISTRATIVE PANEL DECISION

Wartsila Technology Oy Ab v. Privacy service provided by Withheld for
Privacy ehf / linda buzgo
Case No. D2022-0404

1. The Parties

The Complainant is Wartsila Technology Oy Ab, Finland, represented by SafeNames Ltd., United Kingdom.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / linda buzgo, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <wartssila.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 7, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on February 9, 2022, 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 10, 2022.

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 February 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 4, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on March 9, 2022. 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 a Finnish corporation, established in 1834, which operates in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. The Complainant is operating in over 200 locations across more than 80 countries worldwide and in 2019 it had net sales of EUR 5.2 billion and approximately 19,000 employees.

The Complainant and its affiliates hold numerous trademark registrations for WÄRTSILÄ or WARTSILA, such as the following:

- the International Trademark Registration no. 1005789 registered on May 22, 2009, covering goods and services in the International Classes 7, 9, 11, 12, 35, 37, 41, 42; and
- the European Union Trade Mark Registration No. 000838466, filed on June 1, 1998 and registered on February 21, 2000, covering goods and services in the International Classes 7, 12, 37.

The Complainant holds a portfolio of over 400 active domain name registrations, the main one being <wartsila.com>.

The disputed domain name <wartssila.com> was registered on September 24, 2021, and, according to the evidence provided in the Complaint, it was used in connection with pay-per-click advertising pages ("PPC") redirecting the Internet users to unconnected third-party sites.

Before commencing the present proceeding, on October 1, 2021, the Complainant send a cease-and-desist letter to the Respondent in relation to the disputed domain name. The letter remained unanswered.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its trademark WARTSILA with one additional letter "s", the Respondent has no rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

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

6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

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

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

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the WARTSILA trademark.

The disputed domain name <wartssila.com> incorporates the Complainant's trademark with one letter "s" added. However, such alteration does not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that a domain name consisting of a misspelling of the complainant's trademark (*i.e.*, typosquatting) does not prevent a finding of confusing similarity. See section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (*e.g.*, ".com", ".info", ".org") may typically be disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark WARTSILA, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that it has given no license or other right to use its trademark to the Respondent, that the Respondent is not commonly known by the disputed domain name, and that the Respondent has not used the disputed domain name in connection with a legitimate non-commercial or fair use or a *bona fide* offering of goods and services.

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not replied to the Complainant's contentions to advance a claim to any rights or legitimate interests in the disputed domain name.

According to the records before the Panel, the Respondent has used the disputed domain name in connection with a parking page displaying PPC links, promoting third party services. UDRP panels have constantly found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's marks or otherwise mislead Internet users. See section 2.9 of the [WIPO Overview 3.0](#). Noting the global reputation of the Complainant's trademark that is confusingly similar to the disputed domain name, the Panel finds it is the case in the present proceeding.

For all these reasons, the Panel finds that the second element of the Policy is established, and the Respondent has no rights or legitimate interests in respect of the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant has been operating its business since 1834, holding trademark rights for WARTSILA since at least 1997, and has established a reputation worldwide in its field of activity.

At the time of filing the Complaint, the disputed domain name, reproducing the Complainant's trademark with an obvious alteration, resolved to a parking page providing links to third party websites.

From the above, the Panel finds that the Respondent was aware of the Complainant, its business and trademark at the time of the registration of the disputed domain name.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other on-line 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" is evidence of registration and use in bad faith.

The Respondent was using without permission the Complainant's trademark in order to get traffic on its web portal and to misleadingly divert Internet users to third parties websites, and thus to potentially obtain commercial gain from the false impression created with regard to a potential affiliation or connection with the Complainant.

The Respondent failed to provide any argument in its favor in response to the Complainant's cease-and-desist letter and present Complaint. The Complainant's mark is distinctive and has gained a reputation worldwide in its area of activity. From the documents before it, the Panel cannot find any conceivable good faith use of the disputed domain name. Having in view the other circumstances of this case, such facts constitute evidence of bad faith.

Furthermore, it was consistently found by previous UDRP panels that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a third party's famous or widely-known trademark constitutes, by itself, a presumption of bad faith registration for the purpose of Policy. See section 3.1.4 of the [WIPO Overview 3.0](#).

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <wartssila.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: March 23, 2022