

ADMINISTRATIVE PANEL DECISION

Wärtsilä Technology Oy Ab v. Eazy E
Case No. D2022-2340

1. The Parties

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

The Respondent is Eazy E, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <wartcila.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 June 28, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 30, 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 July 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 3, 2022.

The Center appointed Alistair Payne as the sole panelist in this matter on August 23, 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 that commenced business as a sawmill and iron works company in 1834 and now operates in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. In 2021, it had net sales of EUR 4.8 billion with approximately 17,000 employees. The Complainant has a strong international presence with operations in over 200 locations across 68 countries. The Complainant owns various trade mark registrations internationally for its WARTSILA trade mark including, in particular, European Union trade mark registration 011765294 registered on September 18, 2013. It also owns the domain name <wartsila.com> from which it operates its main website. It owns a portfolio of over 400 active domain name registrations and also has an established social media presence on the main social media platforms.

The disputed domain name was registered on September 5, 2021, and currently does not resolve to a functional webpage. Previously, it resolved for a time to a page advertising the CentOS computer operating system.

5. Parties' Contentions

A. Complainant

The Complainant submits that it owns registered trade mark rights in its WARTSILA mark as noted above. It says that the disputed domain name constitutes an example of "typosquatting" and that the Respondent has chosen the "wartcila" element of the disputed domain name because it is confusingly similar to the WARTSILA mark. It submits that Internet users may easily type the letter "c" instead of "s", and land on the disputed domain name rather than the Complainant's domain name leading to the Complainant's website. The Complainant submits that this changed letter is not sufficient to distinguish the disputed domain name from the Complainant's trade mark. As a result, the Complainant submits that the disputed domain name is confusingly similar to its registered trade mark rights.

The Complainant says that to the best of its knowledge, the Respondent does not have any trade mark rights to the term WARTSILA or any other term used in the disputed domain name. There is also no evidence that the Respondent retains unregistered trade mark rights to the term WARTSILA or any other term used in the disputed domain name. Nor has the Respondent received any licence from the Complainant to use domain names featuring the WARTSILA trade mark

The Complainant says that the Respondent is not offering any goods or services from the disputed domain name which is currently held passively and does not resolve to a webpage. Instead, the Complainant asserts that the Respondent has deliberately registered a domain name which typosquats upon the distinctive mark WARTSILA and that this made-up term is not a phrase a trader would legitimately choose unless seeking to create an impression of association with the Complainant.

Although a historical screenshot of the disputed domain name shows that it previously hosted a website advertising the services of the CentOS computer operating system, the Complainant notes that this webpage has been used as a 'placeholder' by other respondents in UDRP proceedings, where panels have invariably found that such use does not amount to rights or legitimate interests (see, for example, *Penningtons Manches Cooper LLP v. John Owens*, WIPO Case No. [D2021-4014](#)). The Complainant asserts that there is a consensus under the UDRP that using a trade mark to redirect users to an unrelated webpage is not indicative of rights or legitimate interests.

To the best of the Complainant's knowledge, it says that the Respondent is not commonly known by the distinctive term "wartsila", nor is it offering any genuine goods or service under the term "wartsila". Therefore, there is no plausible reason for the registration and use of the disputed domain name, other than to take advantage of the goodwill and reputation attaching to the WARTSILA mark.

The Complainant says that its WARTSILA mark is a fanciful term having no generic or common usage and that since its creation 24 years prior to the disputed domain name, it has become well known for energy and marine services. It suggests that this amounts to a case of typosquatting by inclusion of a “c” in place of the “s” in the hope that Internet users misspell the Complainant’s mark and domain name and therefore submits that the registration of the disputed domain name was in bad faith.

The Complainant notes that the disputed domain name does not currently resolve to an active website and says that this amounts to a passive holding in bad faith. It says that the minimal previous use of the disputed domain name, to display a page advertising the services of CentOS, does not amount to good faith use. This is because the disputed domain name has no relation to this service and can only reasonably be construed as a misspelling of the Complainant’s mark. The Complainant notes that previous panel decisions have found that this historical use does not negate a finding of ‘bad faith’ (see, for example, *FXCM Global Services, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Soy Cao*, WIPO Case No. [D2021-0653](#): “The bad faith finding also results from the alternate use of the disputed domain name without “www”, which leads to a page advertising the open-source computing platform “CentOS Linux”, a service completely unrelated to the Complainant. Such use disrupts the Complainant’s business”).

Overall, the Complainant submits that the Respondent’s registration and use of the disputed domain name is opportunistic and seeks to take advantage of the Complainant’s trade mark and reputation. It notes that mail exchange records are present on the disputed domain name and surmises that this could lead to a risk of the disputed domain name being used for misleading emails. It also says that the Respondent failed to respond to its cease and desist letter sent on September 20, 2021, which it says is also indicative of bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns registered trade mark rights for its WARTSILA trade mark including, in particular, European Union trade mark registration 011765294 registered on September 18, 2013. The disputed domain name is identical to the Complainant’s registered trade mark except for the replacement of the “s” by a “c”. The Panel finds that the replacement of one letter does not alter the overall impression given by the disputed domain name of confusing similarity with the Complainant’s WARTSILA trade mark.

Accordingly, the Panel finds that the Complaint succeeds under this element of the Policy.

B. Rights or Legitimate Interests

The Complainant has submitted that to the best of its knowledge, the Respondent does not have any trade mark rights to the term WARTSILA or any other term used in the disputed domain name. It has also asserted that there is no evidence that the Respondent retains unregistered trade mark rights to the term WARTSILA or any other term used in the disputed domain name and that it has not received any licence from the Complainant to use domain names featuring the WARTSILA trade mark

The Complainant has submitted that the Respondent is not offering any goods or services from the disputed domain name which is currently held passively and which does not resolve to a functional web page. Instead, the Complainant asserts that the Respondent has deliberately registered a domain name which typosquats upon the distinctive WARTSILA mark and that this made-up term is not a phrase a trader would legitimately choose unless seeking to create an impression of association with the Complainant.

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to or to rebut the Complainant's case whether by replying to the Complainant's agent's cease and desist letter or by way of response to this Complaint. For these reasons and as set out under Section 6.C. below the Panel finds that the Complaint also succeeds under this element of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name was registered in September 2021, long after the Complainant started using and then registered its highly distinctive and coined mark. Considering also the size of the Complainant's business and of its international operations and its very long standing establishment and that the disputed domain name only differs from the Complainant's mark (not including the accents) by the replacement of the letter "s" with the letter "c" there is a strong inference that the Respondent was well aware of the Complainant's mark and business when it registered the disputed domain name.

At the date of this Complaint, the disputed domain name resolves to a blank page and there is no evidence that it has ever been actively used except, at one time, to display a page advertising the services of the CentOS Linux operating system. There is no evidence that the Respondent or the disputed domain name has any relation to that service and the Complainant has noted that this page has been used previously by respondents as a placeholder page in circumstances of overall bad faith (see, for example, *FXCM Global Services, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Soy Cao*, WIPO Case No. [D2021-0653](#) and *Pennington Manches Cooper LLP v John Owens*, WIPO Case No. [D2021-4014](#)).

Currently the disputed domain name does not resolve to a functioning webpage. Section 3.3 of the [WIPO Overview 3.0](#) sets out the circumstances in which past panels have found passive holding of a domain name in bad faith as follows:

"While 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put."

In this case the Complainant's WARTSILA mark is highly distinctive and a coined term and through substantial use over many years appears to have developed a substantial reputation in its sector of activity. The Respondent has failed to submit a response or to provide any evidence of the actual or contemplated good faith use of the disputed domain name. Further, the Respondent appears to have provided false physical address details based on the inability of the courier company to deliver the hard copy materials in these proceedings to the Respondent's stated address in Lagos, Nigeria. Finally, without the Complainant's express consent and authority, there is no plausible use to which the disputed domain name could be put in good faith, noting that the Complainant's mark is an entirely distinctive coined term and that the disputed domain name only differs from it by one letter and this therefore appears to be a case of typosquatting, which past panels have found on its own to amount to bad faith.

Accordingly, the Panel finds that the disputed domain name has been registered and used in bad faith, and that the Complaint also succeeds under this 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 <wartcila.com> be transferred to the Complainant.

/Alistair Payne/

Alistair Payne

Sole Panelist

Date: September 6, 2022