

ADMINISTRATIVE PANEL DECISION

Alstom v. Domain Administrator, See PrivacyGuardian.org / Yu Pia
Case No. D2022-3518

1. The Parties

The Complainant is Alstom, France, represented by Lynde & Associates, France.

The Respondent is Domain Administrator, See PrivacyGuardian.org, United States of America (“US”) / Yu Pia, China.

2. The Domain Name and Registrar

The disputed domain name <alstommgrou.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 22, 2022. On September 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 September 27, 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 September 30, 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 October 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 24, 2022.

The Center appointed Ganna Prokhorova as the sole panelist in this matter on October 25, 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 Alstom, a French company involved in the business power generation, power transmission and rail infrastructure.

The Complainant owns the trademark ALSTOM and has numerous trademark registrations for ALSTOM, in particular:

- International Trademark Registration No. 706292 for ALSTOM, registered on August 28, 1998, in classes 1, 2, 4, 6, 7, 9, 11, 12, 13, 16, 17, 19, 24, 35, 36, 37, 38, 39, 40, 41, and 42;
- European Union Trade Mark Registration No. 948729 for ALSTOM, registered on August 8, 2001, in classes 6, 7, 9, 11, 12, 16, 19, 24, 35, 36, 37, 38, 39, 40, 41, and 42.

ALSTOM is a coined mark, which has no meaning in the English language.

The Complainant is the owner of the domain name <alstom.com> registered on January 20, 1998, which is where the Complainant hosts and maintains its business website. Furthermore, the Complainant holds a number of other domain names, such as <alstomgroup.com> registered since November 14, 2000, <alstomgroup.net> registered since June 1, 2017, <alstomgroup.fr> registered since June 2, 2017, <alstomgroup.eu> registered since November 24, 2018, and <alstomrgroup.com> registered since November 10, 2021. The majority the above-mentioned domain names are redirected to the Complainant's group website, at "www.alstom.com".

The disputed domain name was registered on September 7, 2022. Initially, it reverted to a page in construction indicating that a website is in preparation. At the time of considering the Complaint, the disputed domain name is used to resolve to an inactive page.

5. Parties' Contentions

A. Complainant

The Complainant is a French company founded in 1928, which operates globally in rail infrastructure, power generation and transmission. It employs 36,000 professionals in more than 60 countries. One of these countries of operation are the US, where the Respondent is reportedly based, according to the information provided by the Registrar. In the US, the Complainant employs 2,200 people, dispatched across 15 sites, working with more than 350 suppliers in 35 states.

The Complainant contends as follows:

(1) The Complainant and its trademark ALSTOM enjoy a worldwide reputation. The Complainant owns numerous ALSTOM trademark registrations around the world. The disputed domain name results in the combination of the element "alstomm" (which is almost identical to ALSTOM's prior marks since it differs by only one letter ("m") that will not be noticed and do not change the pronunciation, identical to the ALSTOM's prior marks), the word "group" (a term which only refers to a group of companies), and the suffix ".com" (which only indicates that the disputed domain name is registered in the ".com" generic Top-Level Domain).

(2) The Respondent is neither affiliated with the Complainant in any way, nor has it been authorized by the Complainant to use and register its trademark, or to seek registration of any domain name incorporating said trademark. The Respondent has not applied for or obtained any trademark registrations related to the sign ALSTOM. He is not either commonly known under the name ALSTOM. The Respondent has not made any reasonable and demonstrable preparations to use the disputed domain name.

(3) Taking into account the worldwide reputation of the Complainant and its trademarks, the composition of the disputed domain name which incorporates the Complainant's trademark ALSTOM following the letter "m" and generic term "group", as well as the fact that the mentioned trademark significantly predates the registration date of the disputed domain name, the Respondent registered the disputed domain name in a bad faith. The disputed domain name is a clear case of deliberate typo-squatting. Passive holding does not preclude a finding of bad faith in the circumstances of the case. The Respondent does not use the disputed domain name in relation to a *bona fide* offering of goods or services.

The Complainant requests transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

(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 respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith. The onus of proving these elements is on the Complainant. Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

The Respondent failed to submit a response in accordance with paragraph 5(a) of the Rules. Paragraph 5(f) of the Rules establishes that if a respondent does not respond to the Complaint, in the absence of exceptional circumstances, the Panel's decision shall be based upon the Complaint.

The Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions.

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See, section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

According to paragraph 4(a)(i) of the Policy it should be established that the disputed domain name is identical or confusingly similar to a mark in which the complainant has rights.

The Complainant has provided evidence of its rights in the ALSTOM trademarks. Therefore, the Panel is satisfied that the Complainant has registered trademark rights in the ALSTOM marks. See [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name reproduces the Complainant's trademark ALSTOM in its entirety, followed by the letter "m" and the term "group". It is well established that a domain name that wholly incorporates a

trademark may be confusingly similar to that trademark for purposes of the Policy despite the addition of another term or terms. As stated in section 1.8 the [WIPO Overview 3.0](#) “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element”. Here, the Complainant’s trademark is recognizable within the disputed domain name.

The addition of the Top-Level Domain (“TLD”) “.com” is irrelevant when evaluating the confusing similarity of a disputed domain name, as it results from a technical constraint.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent’s defenses under UDRP, paragraph 4(c) include the following:

- (i) before any notice of the dispute, the Respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods and services;
- (ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel notes that the Respondent has not filed any response and thus did not deny the Complainant’s assertions, nor brought any information or evidence for demonstrating any rights or legitimate interests.

The Complainant has made a *prima facie* showing that the Respondent does not have any rights or legitimate interests in the disputed domain name, particularly by asserting that the Respondent is not affiliated with it in any way and that it never authorized the Respondent to use its trademark as part of the disputed domain name.

The Complainant further contends that the Respondent is not known under the disputed domain name and does not make any *bona fide* use, neither commercial nor noncommercial, of the same, being emphasized that the disputed domain name does not resolve towards an active web page with substantive content.

The Panel finds that the Complainant has met the requirement under the Policy of showing that the Respondent does not have any rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

To fulfill the third requirement of the Policy, the Complainant must prove that the disputed domain name was registered and is being used in bad faith.

The Complainant has substantiated the fact that its trademark ALSTOM, which has been registered and used in France and internationally for years, now benefits from a high level of public awareness.

It therefore appears very unlikely that the Respondent could not be aware of the Complainant's rights in the trademark ALSTOM when it sought to register the disputed domain name. The typo-squatting nature of the disputed domain name (adding the letter "m" which makes the name "alstomm" misspelled) further supports this inference.

Consequently, it is established by the Panel that the Respondent registered the disputed domain name in bad faith.

As regards the use, the disputed domain name is passively held. Section 3.3 of the [WIPO Overview 3.0](#) describes the circumstances under which the passive holding of a domain will be considered to be in bad faith: "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."

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith.

There is no evidence in the record of a legitimate use of the disputed domain name. The trademark of the Complainant is distinctive and widely used in commerce. Previous panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

For the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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, <alstommgroup.com> be transferred to the Complainant.

/Ganna Prokhorova/

Ganna Prokhorova

Sole Panelist

Date: November 2, 2022