

ADMINISTRATIVE PANEL DECISION

Altron Limited, Altron TMT Limited v. ALTRON LIMITED DOOEL export-import Skopje

Case No. D2022-4163

1. The Parties

The Complainant is Altron Limited, Altron TMT Limited, South Africa, represented by Edward Nathan Sonnenbergs Inc., South Africa.

The Respondent is ALTRON LIMITED DOOEL export-import Skopje, North Macedonia.

2. The Domain Name and Registrar

The disputed domain name <altron.ltd> 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 November 3, 2022. On November 3, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 4, 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 (Domains By Proxy, LLC / NIMBUS SOFTWARE) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 7, 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 amendment to the Complaint on November 8, 2022.

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 registrar-disclosed registrant of the Complaint, and the proceedings commenced on November 11, 2022. In accordance with the Rules, paragraph 5, the due date for the Response was December 1, 2022.

On November 27, 2022, the Respondent sent an informal email to the Center, copied to the Complainant's representative.

The Center appointed Steven A. Maier as the sole panelist in this matter on December 8, 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.

On December 29, 2022, the Panel issued Procedural Order No. 1, inviting the Complainant to respond to the Respondent's informal email dated November 27, 2022. The Complainant submitted a supplemental filing accordingly on January 6, 2023. On January 10, 2023, the Panel issued Procedural Order No. 2, inviting the Respondent to respond to the Complainant's supplemental filing dated January 6, 2023. The Respondent submitted a supplemental filing accordingly on January 26, 2023.

4. Identity of Respondent

The Respondent's email to the Center dated November 27, 2022 was sent by an individual named Ivana Dichovska. Ms. Dichovska claims that the Respondent, and not the registrar-disclosed registrant, is the correct registrant of the disputed domain name. She produces exhibits, including a translation of a certificate of standing issued by the Central Register of the Republic of North Macedonia, which indicates that the Respondent is a North Macedonia registered company which was founded on January 16, 2015. Ms. Dichovska submits further documentation, showing that she is the registered Manager of the Respondent and that one Naum Dichovska is the registered Owner of the Respondent. She states that Mr. Dichovska is her husband and that he mistakenly registered the disputed domain name in the name of the registrar-disclosed registrant, being a company for which he had previously worked, but had left by 2018. She submits that the registration error was a technical oversight which was possibly caused by an autofill function. She states that she herself has never had any involvement with that company, even though she is wrongly recorded as the contact name for that party.

Under paragraph 1 of the Rules, the term Respondent is defined as "the holder of a domain-name registration against which a complaint is initiated". It is well established in jurisprudence under the UDRP that the term "holder" may refer to the original registrant of the disputed domain name or alternatively to its "beneficial holder", depending upon the circumstances of the case. Further, it is a matter for the Panel to determine the correct identify of the respondent or respondents in any given case.

On this basis of the Respondent's submissions and evidence as above, the Panel accepts on balance that the Respondent, and not the registrar-disclosed registrant, is the beneficial holder of the disputed domain name and is therefore the appropriate Respondent in this case. The Panel notes that, while the Complainant maintains its Complaint on the grounds set out below, it does not dispute the existence of the Respondent or its claim that the disputed domain name was wrongly registered in the name of the registrar-disclosed registrant.

The Panel does not consider that the registrar-disclosed registrant should remain a Respondent in this proceeding, since the Respondent has demonstrated to the satisfaction of the Panel that the registrar-disclosed registrant should never have been registered as the holder of the disputed domain name. Nor has anything been heard from that party in connection with this proceeding. Furthermore, in view of the Panel's conclusions as set out below, the Panel does not consider that there is any administrative reason (such as implementation of the Decision) why the registrar-disclosed registrant should remain a Respondent.

The Panel directs in the circumstances that the Respondent be treated as the sole Respondent in this proceeding.

5. Factual Background

The Complainant comprises two companies registered in South Africa. They form part of the same group of companies and are referred to collectively as the Complainant in this Decision. The Complainant provides differentiated technology solutions aimed at digital transformation and service clients operating in the fintech, healthcare, safety and security, and skills development sectors.

The Complainant is the owner of various registrations for the trademark ALTRON, including the following:

- South Africa trademarks registration numbers 1990/05885 to 1990/05888 inclusive (four registrations) and 1990/05888/1 for the word mark ALTRON, registered on December 22, 1993 with a publication date of May 26, 1993, for goods and services in International Classes 35, 36, 37, 38, and 42 respectively;
- South Africa trademark registration number 1990/05884 for the word mark ALTRON, registered on June 30, 1994 with a publication date of May 26, 1993 for goods and services in International Class 35; and
- South Africa trademark registration number 1990/05882 to 1990/05883 inclusive (two registrations) for the word mark ALTRON, registered on October 20, 2003 with a publication date of June 29, 1994, for goods and services in International Classes 9 and 16 respectively.

The Complainant also provides evidence of device marks including the name ALTRON registered in India and Mauritius in 2019, Australia, Botswana, and Kenya in 2020, and Mozambique in 2021. It also evidences United Arab Emirates registrations for the mark ALTRON dated 2022.

The disputed domain name was registered on October 16, 2021.

According to evidence submitted by the Complainant, the disputed domain name has resolved to a GoDaddy "parking page". The relevant page states "altron.ltd is parked free, courtesy of GoDaddy.com". It includes a box labelled "Get This Domain" which is followed by what appear to be links to "Related Search Topics", including "Altron South Africa", "Altron Michigan", "Altron Minnesota", "Altron Incorporated", "Altron Inc", and "Altron Arrow".

6. Parties' Contentions

A. Complainant

The Complainant states that it has traded since 1965 and that it has consistently used the ALTRON mark since at least the early 1970s. It submits that it was listed on the Johannesburg stock exchange in 1979. The Complainant states that it operates over 100 service points throughout South Africa and is active in eight countries on four continents including in the Middle East and Australia. It describes its principal business activities and refers to the further information provided on its website at "www.altron.com", which it states went live in approximately 2005.

The Complainant submits that a Google search against the term "altron" produces an entire first page of results that reference the Complainant. The Complainant exhibits Google search results accordingly. It also refers to media coverage of its business in (South African) trade publications including Business Tech and Engineering News and to its social media presence on LinkedIn, Twitter, and Facebook. It submits that it has approximately 3,500 followers on its Facebook page.

The Complainant submits that the disputed domain name is identical to its ALTRON trademark. It contends that, while the generic Top-Level Domain ("gTLD") ".ltd" should be disregarded for the purpose of

comparison, it nevertheless enhances the likelihood of confusion in view of the Complainant's company name, "Altron Limited".

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that the name ALTRON is an invented and fanciful word coined by the Complainant's predecessor many decades ago and is not a common or dictionary word. It submits that it is not possible to understand how the Respondent may have independently coined and conceived of the disputed domain name and that it must therefore be assumed to have had knowledge of the Complainant's trademark. The Complainant contends that the fact that the Respondent is also in the software sector is a further indication that it must have known of the Complainant and its business.

The Complainant states that it has never licensed or authorized the Respondent to use its ALTRON trademark.

The Complainant submits that the disputed domain name has resolved to a GoDaddy parking page where it is offered for sale. It states that the relevant link leads to a domain broker service stating that the disputed domain name is taken but "we might still be able to get it for you". The Complainant adds that the GoDaddy page contains a number of sponsored links from which the Respondent is no doubt seeking to generate an income. The Complainant contends that neither offering the disputed domain name for sale, nor using it to generate income from sponsored links, can amount to a *bona fide* offering of goods or services related to the disputed domain name.

The Complainant specifically disputes in all the circumstances that the Respondent can credibly establish that it has been commonly known by the disputed domain name

The Complainant submits that the disputed domain name was registered and is being used in bad faith. It contends that the Complainant's ALTRON trademark commands significant reputation and goodwill and that the disputed domain name will inevitably bring the Complainant's trademark to mind. It contends that, without a plausible and justifiable explanation for the Respondent's choice of the disputed domain name, the only reasonable explanation is that the Respondent registered the disputed domain name for the purpose of taking unfair advantage of the Complainant's trademark.

The Complainant submits that the Respondent's current uses of the disputed domain name indicate that it has little interest in activating any website that might be used for any genuine business and that it is merely profiting commercially from the association between the disputed domain name and the Complainant's trademark. It adds that the sponsored links on the Respondent's GoDaddy webpage include websites offering electronic components and printed circuit boards, which are among the goods covered by the Complainant's trademark registrations in South Africa and elsewhere.

The Complainant submits that it is notable that the Respondent does not use the disputed domain name for the purpose of any website related to its stated business as a "software development and engineering company, with main focus on creating software solutions". It further submits that, even if the Respondent were to use the disputed domain name for the purpose of such a website in the future, that website will inevitably confuse Internet users into believing they are dealing with the Complainant, which is liable to cause loss and reputational damage to the Complainant. The Complainant points out that the services described by the Respondent are again services covered by the Complainant's trademark registrations.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent provides evidence of its registration as of January 16, 2015 as mentioned above. Its certificate of standing describes its main activity as "wholesale of computers, peripheral equipment and software". Its contact email addresses as at the date of that document include "[...]@altronltd.com".

The Respondent exhibits a Facebook page in the name of “Altron LTD” which appears to have been active since at least 2018. It refers to 83 “likes” and a similar number of “followers”.

The Respondent accepts that the name ALTRON is not a common or dictionary word. It states that it chose the name of its company for personal and sentimental reasons, in that it combines the name of the founders’ firstborn child and their favourite movie, “Tron Legacy”.

The Respondent states that it purchased the disputed domain name in 2021, six years after it was established, when it discovered it was available and in order to protect its name “Altron Ltd”. The Respondent submits that the Complainant had many years to acquire the disputed domain name before the Respondent did so and that no objection was made by the Complainant until a year after the disputed domain name had been so acquired.

The Respondent denies that the name ALTRON is unique to the Complainant in the field of computer and related services. It identifies as examples of other users of that name “www.altroninc.com” which is a supplier of technology services to the US navy, “www.altron.co.uk” which is a supplier of CCTV mounting solutions and “www.alltron.ch” which is a supplier of computer equipment.

The Respondent denies that it has offered the disputed domain name for sale. It provides GoDaddy records for the disputed domain name and also its domain name <altronltd.com>, for both of which it says the option to sell the domain name is not selected. The Respondent states that neither of the domain names are listed in any GoDaddy auction. The Respondent further submits that, while a search on “who.is” includes a statement “Interested in buying it? Make an Offer”, this is not the same as offering the disputed domain name for sale. It exhibits evidence that a search on that platform for the Complainant’s own domain name, <altron.com>, produces a similar statement. It also produces a GoDaddy search for the domain name <altron.com> which states “altron.com is taken – Maybe we can still get them for you”. The Respondent submits in the circumstances that it has simply used GoDaddy’s standard parking page service.

On a similar basis, the Respondent contends that it is not managing the content of the GoDaddy parking page so far as sponsored links are concerned, and this is part and parcel of the “courtesy” parking page service offered by GoDaddy.

7. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (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.

A. Identical or Confusingly Similar

The Complainant has established that it has registered trademark rights in respect of the mark ALTRON.

The disputed domain name is identical to that trademark, ignoring the gTLD “.ltd” which may typically be disregarded for the purpose of comparison.

The Panel therefore finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

A respondent may establish rights or legitimate interests in respect of a disputed domain name if it can demonstrate that: "... you (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..." (paragraph 4(c)(ii) of the Policy).

Further guidance on how a respondent can establish that it is "commonly known by" the disputed domain name is found in section 2.3 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The section states as follows:

"Absent genuine trademark or service mark rights, evidence showing that a respondent is commonly known by the domain name may include: a birth certificate, driver's license, or other government-issued ID; independent and sustained examples of secondary material such as websites or blogs, news articles, correspondence with independent third parties; sports or hobby club publications referring to the respondent being commonly known by the relevant name; bills/invoices; or articles of incorporation."

In this case, the Panel finds that the Respondent has produced official documentation to establish that it was duly registered under the laws of North Macedonia on January 16, 2015. The Panel considers such evidence to be equivalent to producing "articles of incorporation" and finds therefore that the Respondent has made out a *prima facie* case that it has been commonly known by the disputed domain name. The Panel notes that, while the Respondent's full name is obviously longer than "ALTRON LIMITED", these terms form the first two elements of that name.

Despite the Respondent having established a *prima facie* case as set out above, the Complainant may still succeed in its Complaint if it can establish that the disputed domain name was selected, not for the purpose of reflecting a legitimate company name, but instead for the purpose of targeting the goodwill which attached to the Complainant's ALTRON trademark. The Complainant contends, in particular, that the Respondent must have known of its trademark when it registered the disputed domain name and can have chosen it for no reason other than to take advantage of the Complainant's reputation in the technology sector.

Looking first at the distinctiveness and the reputation of the Complainant's ALTRON trademark, the Panel accepts that the Complainant has established significant business goodwill attaching to that mark in South Africa and, potentially, in other territories in which it is active. However, the Panel does not find its trademark to be unique or so distinctive as to be overwhelmingly associated with the Complainant as opposed to any other party.

While the Complainant has relied on a page of Google search results against the term "altron", the Panel notes that such search results are likely to be location-sensitive and dependent upon the IP address of the searching computer. In the case of the Panel's own Google search, from a UK-based IP address, the first page of results refers to other businesses using the term ALTRON in addition to the Complainant, including "www.altron.co.uk" (as mentioned by the Respondent) and "www.altron.net" (a Czech company offering data services). The Respondent has identified at least one further user of that name.

Therefore, while the Panel accepts that the mark ALTRON is a coined term which may well have been devised by the Complainant's predecessor, the Panel does not find the Complainant's use of the name to be so notorious or so distinctive that that the Respondent must be assumed to have registered the disputed domain name (or its business) with the Complainant's trademark in mind. The Respondent has offered an explanation for its choice of the disputed domain name, the veracity of which it is beyond the scope of the UDRP further to investigate.

The Panel has also considered whether there are grounds to find that the Respondent, even if commonly known by the disputed domain name, is in fact a "sham" company which was created merely as pretext for abusively registering the disputed domain name. That is not a conclusion which the Panel is able to reach, on the evidence presented to it by the Parties.

While the Respondent does not provide evidence of any trading history as such, paragraph 4(c)(ii) of the Policy expressly states that it is unnecessary for a respondent to have acquired trademark rights, such as a history of trading would tend to establish. Furthermore, the Respondent has provided evidence not only of its registration, but also of its ownership and use of the domain <altronltd.com> since 2015 and of some level of presence on social media.

The Panel concludes in the circumstances that the Complainant is unable to establish, on the balance of probabilities, either (a) that the Respondent must have registered the disputed domain name in the knowledge of, and in order to target, the Complainant's ALTRON trademark, or (b) that the Respondent's registered business, under a name corresponding to the disputed domain name, is merely a pretext for a registration which targets that trademark. The Complainant does not therefore defeat the Respondent's assertion that it has commonly been known by the disputed domain name, and cannot therefore establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complaint must therefore fail.

C. Registered and Used in Bad Faith

The Complainant having failed to establish the second element under paragraph 4(a) of the Policy for the reasons set out above, it is unnecessary for the Panel to consider the issues of registration and use of the disputed domain name in bad faith.

8. Decision

For the foregoing reasons, the Complaint is denied.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: February 6, 2023