

ADMINISTRATIVE PANEL DECISION

Arista Networks Inc. v. Sam Morgan
Case No. D2022-4352

1. The Parties

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

The Respondent is Sam Morgan, U.S..

2. The Domain Name and Registrar

The disputed domain name <aristta.com> (the “Disputed Domain Name”) 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 November 15, 2022. On November 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 17, 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 November 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 12, 2022.

The Center appointed Douglas M. Isenberg as the sole panelist in this matter on December 15, 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

Complainant states that it “was founded in 2004 and provides technological products and software solutions for monitoring and network detection and response worldwide, through their primary website, arista.com”; and that it “has over a dozen offices and delivers their computer networking services to Fortune 500 customers located across six continents.”

Complainant states, and provides documentation in support thereof, that it is the owner of the following trademark registrations (the “ARISTA Trademark”):

- European Union Reg. No. 8,473,721 for ARISTA (registered February 1, 2010) for use in connection with, *inter alia*, “computer hardware and software”
- U.S. Reg. No. 4,893,674 for ARISTA (registered January 26, 2016) for use in connection with, *inter alia*, “computer hardware”

The Disputed Domain Name was created on July 26, 2022. Complainant states, and provides documentation in support thereof, that the Disputed Domain Name has been used to send an “invoice for illegitimate orders and wire payments on behalf of Complainant’s company” that resulted in “Complainant’s customer making a wire transfer of over \$100,000 to an unaffiliated bank account.” Complainant filed an abuse complaint with the Registrar, which suspended the Disputed Domain Name.

5. Parties’ Contentions

A. Complainant

- The Disputed Domain Name is confusingly similar to the ARISTA Trademark because, *inter alia*, “Respondent is actively seeking to create confusion in the online marketplace by adding an extra letter ‘T’ in the middle of Complainant’s trademarked term ‘ARISTA’,” which is a “typosquatting method” that “is not only used to capitalize on notorious brand recognition but also demonstrates Respondent’s intention to confuse consumers and target Complainant’s customers with a nearly identical domain name to arista.com.”
- Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, *inter alia*, Respondent has used the Disputed Domain Name to “to invoice for illegitimate orders and wire payments on behalf of Complainant’s company”; “Respondent has no registered trademarks using the term ‘ARISTA’”; “Respondent is not commonly known by the domain name”; “Respondent is using the domain to actively disrupt Complainant’s business and tarnish Complainant’s established trademark ‘ARISTA’”; and “the domain was solely being used to fabricate an association with Complainant’s company employees and trademarked brand name.”
- The Disputed Domain Name was registered and is being used in bad faith because, *inter alia*, “Respondent fraudulently used the domain, ARISTTA.COM, to confuse prospective customers who associate the ‘ARISTA’ brand and Arista Networks corporate name into fulfilling false orders and collecting misdirected wire payments from Complainant’s customer base”; and “Respondent was swindling Complainant’s customers through false communications and representation.”

B. Respondent

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

6. Discussion and Findings

Pursuant to the Policy, Complainant is required to prove the presence of each of the following three elements to obtain the relief it has requested: (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; (ii) 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. Policy, paragraph 4(a).

A. Identical or Confusingly Similar

Based upon the trademark registrations cited by Complainant, it is apparent that Complainant has rights in and to the ARISTA Trademark.

As to whether the Disputed Domain Name is identical or confusingly similar to the ARISTA Trademark, the relevant comparison to be made is with the second-level portion of the Disputed Domain Name only (*i.e.*, “arista”) because “[t]he applicable Top-Level Domain (‘TLD’) in a domain name (*e.g.*, ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.11.1.

The Disputed Domain Name contains the ARISTA Trademark in its entirety, simply adding an extra letter “t” in the middle. As set forth in [WIPO Overview 3.0](#), section 1.9: “A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark.”

Despite the Disputed Domain Name’s addition of an extra letter “t” in the middle of the ARISTA Trademark (a common, obvious, or intentional misspelling of the trademark), the trademark is still clearly recognizable within the Disputed Domain Name. Numerous panels have found that the addition of a single letter, as here, does nothing to alleviate confusing similarity. See, *e.g.*, *ZipRecruiter Inc. v. Registration Private, Domains By Proxy, LLC / Carolina Rodrigues, Fundacion Comercio Electronico*, WIPO Case No. [D2020-3323](#) (“[t]he addition of the letter ‘l’ to the [Complainant’s] mark is an obvious and intentional misspelling of the Complainant’s mark and thus the disputed domain name is confusingly similar to the Complainant’s mark”); *Hotwire, Inc. v. Webatopia Marketing Limited*, WIPO Case No. [D2012-1985](#) (despite “the addition of one letter, ... there can be no doubt that the disputed domain name is identical or confusingly similar to the Complainant’s trade marks”); and *Carvana, LLC v. Carolina Rodrigues*, WIPO Case No. [D2020-1611](#) (“the addition of a single letter” in a disputed domain name “does not change the meaning nor the overall impression of the Complainant’s... trademark” and “is confusingly similar to the Complainant’s mark”).

Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

B. Rights or Legitimate Interests

Complainant has argued that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because, *inter alia*, Respondent has used the Disputed Domain Name to “to invoice for illegitimate orders and wire payments on behalf of Complainant’s company”; “Respondent has no registered trademarks using the term ‘ARISTA’”; “Respondent is not commonly known by the domain name”; “Respondent is using the domain to actively disrupt Complainant’s business and tarnish Complainant’s established trademark ‘ARISTA’”; and “the domain was solely being used to fabricate an association with Complainant’s company employees and trademarked brand name.”

[WIPO Overview 3.0](#), section 2.1, states: “[w]hile 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

The Panel finds that Complainant has established its *prima facie* case and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has satisfied the second element of the Policy.

C. Registered and Used in Bad Faith

Whether a domain name is registered and used in bad faith for purposes of the Policy may be determined by evaluating four (non-exhaustive) factors set forth in the Policy: (i) circumstances indicating that the registrant has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the registrant’s documented out-of-pocket costs directly related to the domain name; or (ii) the registrant has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct; or (iii) the registrant has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the registrant has intentionally attempted to attract, for commercial gain, Internet users to the registrant’s website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the registrant’s website or location or of a product or service on the registrant’s website or location. Policy, paragraph 4(b).

Complainant does not specify which, if any, of the above factors is applicable in this proceeding. Nor has Complainant cited any precedent, whether previous decisions under the Policy or the WIPO Overview, in support of its arguments. Nevertheless, the undisputed facts are clear: Respondent has used the Disputed Domain Name to engage in a business email compromise or phishing scam to impersonate Complainant, which resulted in one of Complainant’s customers sending USD 100,000 to what Complainant has called “an unaffiliated bank account.” This obviously shows that the Disputed Domain Name has been used in bad faith by creating a likelihood of confusion under paragraph 4(b)(iv) of the Policy.

Indeed, as set forth in [WIPO Overview 3.0](#), section 3.1.4, “the use of a domain name for per se illegitimate activity such as... phishing... is manifestly considered evidence of bad faith” And as set forth in [WIPO Overview 3.0](#), section 3.4, using a Disputed Domain Name for “phishing,” especially where “the respondent’s use of the domain name [is] to send deceptive emails” for purposes such as “to solicit payment of fraudulent invoices by the complainant’s actual or prospective customers” constitutes bad faith. See also, *e.g.*, *Kimley-Horn and Associates, Inc. v. Abraham Hashim*, WIPO Case No. [DCO2019-0017](#) (finding bad faith where respondent “posed as two of Complainant’s actual employees in order to send phishing emails to one of Complainant’s clients in an effort to obtain payment on an allegedly outstanding invoice”); *BTWN Exhibits, LLC v. Registration Private, Domains By Proxy, LLC / Ahmed Fawzy, ASM Marketing*, WIPO Case No. [D2020-0036](#) (finding bad faith where “Respondent used the Domain Name to create an email address [and] send fraudulent emails to Complainant’s customers”); and *LinkedIn Corporation v. Michael Moore*, WIPO Case No. [D2022-3287](#) (finding bad faith where “Respondent used the disputed domain name as the sender domain in an email adopting the identity of an employee of Complainant, with other details intended to appear as originating with Complainant, including an invoice designed to appear as originating with Complainant (but with different payment details).”

Accordingly, the Panel finds that Complainant has proven 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, <aristta.com>, be transferred to the Complainant.

/Douglas M. Isenberg/

Douglas M. Isenberg

Sole Panelist

Date: December 19, 2022