

ADMINISTRATIVE PANEL DECISION

ALSTOM v. barrack obama, otitunzeh

Case No. D2023-0957

1. The Parties

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

The Respondent is barrack obama, otitunzeh, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <aistormgroup.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 March 3, 2023. On March 3, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 7, 2023, 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 March 9, 2023.

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 March 17, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 13, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on April 26, 2023. 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 has its registered seat in France and was founded in 1928. It mainly provides transport infrastructures around the globe. It employs around 34.000 professionals in more than 60 countries.

The Complainant is the owner of the ALSTOM trademark, which is registered in many jurisdictions worldwide. Among others, the Complainant owns the United States Trademark Registration No. 85507365 for ALSTOM, registered on November 6, 2012, and covering protection for *i.a.* railway vehicles and associated parts as protected in class 12 (Annex 4 to the Complaint).

Since 1998, the Complainant further owns and operates its main website at “www.alstom.com”. Since 2000, the Complainant further owns and operates a group website at “www.alstomgroup.com” (Annex 5 to the Complaint). The Respondent is reportedly located in the United States. The disputed domain name resolves to a Registrar parked page with pay-per-click links (Annex 7 to the Complaint). However, as evidenced by the Complainant, the disputed domain name has been used for sending out phishing emails to business partners of the Complainant pretending that these emails have been sent by an employee of the Complainant (Annex 8 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its ALSTOM trademark.

The Complainant further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and
- (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.

Paragraph 4(a) of the Policy states that 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. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

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

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in ALSTOM (Annex 4 to the Complaint).

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's ALSTOM trademark. As stated at section 1.9 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, misspellings would not prevent a finding of confusing similarity.

In the present case, the Panel notes that the disputed domain name incorporates an apparent misspelling of the Complainant's ALSTOM trademark by simply transposing the letter "L" by "I" and further adding the letter "r", which in view of the Panel, still makes the Complainant's ALSTOM trademark recognizable within the disputed domain name. In fact, the Panel is convinced that the creation of a confusingly similar domain name was the Respondent's intention. Considering the phishing emails sent to business contacts of the Complainant by using the disputed domain name, the confusing similarity with the ALSTOM trademark is exactly what the Respondent finally achieved (Annex 8 to the Complaint).

Hence, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's ALSTOM trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's ALSTOM trademark in a confusingly similar way within the disputed domain name.

There is also no indication in the current record that the Respondent is commonly known by the disputed domain name. In the absence of a response, the Respondent has further failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c), or provide any other evidence of rights or legitimate interests in the disputed domain name. On the contrary, the Panel finds on the available record (Annex 8 to the Complaint) that the disputed domain name was already used for sending out phishing emails to business contacts of the Complainant, falsely pretending that these emails originate from the Complainant.

Taking into consideration the undisputed phishing attempts, the Panel does not see any basis for assessing a *bona fide* offering of goods or services by the Respondent.

Hence, the Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name according to the Policy, paragraph 4(a)(ii) and 4(c).

C. Registered and Used in Bad Faith

The Panel believes that the Respondent has registered and is using the disputed domain name in bad faith.

At the date of registration of the disputed domain name, the Respondent was apparently well aware of the Complainant and its ALSTOM trademark. The composition of the disputed domain name and its later use make it even obvious to the Panel that the Respondent had the Complainant and its trademark in mind when registering the disputed domain name.

Also, the Panel has no doubt that by using the disputed domain name for sending out phishing emails to business contacts of the Complainant, the Respondent tries to misrepresent itself as the trademark owner for apparently fraudulent purposes (Annex 8 to the Complaint).

In the Panel's view, the Respondent's failure to respond to the Complaint additionally supports the conclusion that it has registered and is using the disputed domain name in bad faith.

Taking all facts of the case into consideration, the Panel is convinced that this is a typical typosquatting case, which the UDRP was designed to stop. The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, 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, <aistormgroup.com>, be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: May 10, 2023