

ADMINISTRATIVE PANEL DECISION

Alstom v. Kennedy Jeston
Case No. D2023-2689

1. The Parties

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

The Respondent is Kennedy Jeston, United Kingdom (“UK”).

2. The Domain Name and Registrar

The disputed domain name <alstom.work> is registered with IONOS SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 22, 2023. On June 23, July 18 and 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 26 and July 26, 2023, 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, 1&1 Internet Limited) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 26, 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 July 28, 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 July 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 18, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on August 24, 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 is a French company created in 1928 and a global leader in power generation, power transmission and rail infrastructure with business activities around the world. It owns various trademark registrations for the mark ALSTOM and containing the mark ALSTOM, *inter alia*:

- United States Patent and Trademark Office mark Registration No. 2898433, registered November 2, 2004, and Registration No 4236513, registered November 6, 2012, and word mark Registration No. 4570546, registered July 22, 2014;
- European Union (“EU”) Intellectual Property Office word Trade mark Registration No. 948729, registered August 8, 2001;
- UK Registration No. UK00900948729, registered August 8, 2001 and UK00900948802, registered June 6, 2002;
- International Trademark Registration No. 706292, registered August 28, 1998, designated for various countries around the world, *e.g.* China, Japan, Russian Federation, Mexico (Annex 4 to the Complaint).

Moreover, the Complainant owns several domain names containing the mark ALSTOM, *e.g.* <alstom.com> registered 1998, <alstom.co.uk> registered 1998, <alstom.net> registered 2000, <alstom.ca> registered 2000, <alstom.info> registered 2001, <alstom.cn> registered 2002, or <alstom.careers> registered 2018 (Annex 5 to the Complaint) and has a strong Internet presence.

The disputed domain name was registered on June 9, 2023 (Annex 1 to the Complaint).

The disputed domain name does not resolve to a website with any active content (Annex 6 to the Complaint).

A request to cease and desist by the Complainant on June 14, 2023 was not complied with (Annex 7 to the Complaint).

5. Parties’ Contentions

A. Complainant

The Complainant is a French company created in 1928 and is a global leader in the world of power generation, power transmission and rail infrastructure, employing 74,000 professionals in more than 70 countries, over 350 sites. The Complainant develops and markets a complete range of systems, equipment, and services in the railway industry, and have activities around the world, and namely in the UK, where the Complainant has been present for over a century.

The Complainant’s group have registered numerous UK companies to manage their activities in this area; throughout these different companies, the Complainant’s group employ over 6 000 people in the UK, who mainly work through thirty different offices (in London, Chester, Glasgow, Liverpool, Manchester, Oxley, Wembley and Widnes).

Given the above, the goods and services the Complainant produces an the mark ALSTOM are well known in the UK and around the world.

The Complainant holds trademark registrations comprising the word ALSTOM in numerous jurisdictions worldwide, including in the United States of America, UK, EU, China, Japan or Russian Federation.

The Complainant is also the registrant of numerous domain names under various generic and country code Top-Level Domains (“gTLDs” and “ccTLDs”) that reflect its trademark ALSTOM.

The disputed domain name is identical or confusingly similar to the ALSTOM mark in which the Complainant has rights, since it wholly and identically reproduces the Complainant’s trademark and only adds the gTLD “.work”.

The Respondent has no rights or legitimate interests in respect of the disputed domain name:

The Respondent is not affiliated in any way to the Complainant and was not authorized, licensed or permitted to register or use a domain name incorporating the Complainant’s ALSTOM mark.

The Respondent has not applied for or obtained any trademark registrations related to the mark ALSTOM and is not commonly known under this name.

The disputed domain name was registered and is being used in bad faith: The disputed domain name completely incorporates the Complainant’s trademark and was acquired long after the Complainant’s mark ALSTOM became well known. The disputed domain name is not used in relation to a *bona fides* offering of goods or services – on the contrary: the disputed domain name simply reverts to an error page. And, the Respondent attempts by any means to conceal his identity, namely by registering the disputed domain name via an anonymization company.

Consequently, the disputed domain name has only the goal to impinge upon the Complainant’s legal rights and damage its reputation, which constitutes bad faith under the Policy.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests with respect to 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

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for identity/confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.7).

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark ALSTOM.

The disputed domain name is identical to the Complainant’s registered trademark ALSTOM since it entirely contains this mark and only adds the gTLD “.work”.

It has long been established under UDRP decisions that gTLDs are generally disregarded when evaluating the confusing similarity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy in the present case.

B. Rights or Legitimate Interests

While 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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant’s well-known and distinctive mark in its entirety, cannot be considered fair as this carries a high risk of implied an affiliation with the Complainant that does not exist (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has rights and is the owner of the well-known and distinctive registered trademark ALSTOM, which is registered and used in many jurisdictions around the world for decades. Moreover, the Complainant registered and is using various domain names containing the mark ALSTOM since years, e.g. <alstom.com>, <alstom.org>, <alstom.co.uk>, <alstom.cn>, or <alstom.ca> among others.

It is inconceivable for this Panel that the Respondent registered the disputed domain name without knowledge of the Complainant and its rights in the mark ALSTOM which were established long before the registration of the disputed domain name; these facts lead to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant’s distinctive and well-known trademark ALSTOM entirely and in an identical way.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The disputed domain name is also being used in bad faith: Although there is no evidence that the disputed domain name is being actively used or resolved to a website with substantive content, previous UDRP panels have found that bad faith under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – the non-use of a domain name (including a blank, error or “coming soon” page) would not prevent a finding of bad faith (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO

Case No. [D2002-0131](#) and section 3.3. of the [WIPO Overview 3.0](#)).

Moreover, this Panel concludes that the disputed domain name is being used in bad faith, putting emphasis on the following:

- the Complainant's trademark ALSTOM is well-known;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name is inherently misleading, and is thus suited to divert or mislead potential Internet users from the website they are actually trying to visit (the Complainant's site); and
- there is no conceivable plausible good faith use with regard to the misleading disputed domain name.

Taking all these facts and evidence into consideration, this Panel finds that the disputed domain name has been registered and used in bad faith under 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 <alstom.work> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: September 6, 2023