

ADMINISTRATIVE PANEL DECISION

Alstom v. GILBERT BUCCI, Alstom
Case No. D2023-4259

1. The Parties

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

The Respondent is GILBERT BUCCI, Alstom, United States of America.

2. The Domain Name and Registrar

The disputed domain name <alstompowerinc.com> is registered with Squarespace Domains II LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 2023. On October 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 12, 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 (Contact Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 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 October 25, 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 October 26, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 16, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on November 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, established in 1928, which manufactures and maintains railway rolling stock. It employs more than 34,000 staff in over 60 countries and provides signaling for more than 50% of the railroads in North America. The Complainant trades as ALSTOM, both *solus* and in conjunction with other terms, and owns many trade marks worldwide to protect this trading style. These include, by way of example only, European Union Trade Mark, registration number 000948729 for ALSTOM in multiple classes, registered on August 8, 2001.

The disputed domain name was registered on May 16, 2023. It does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that;

- the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. It reproduces exactly the Complainant's well-known ALSTOM mark, which is recognizable within the disputed domain name;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated in any way with the Complainant. To the best of the Complainant's knowledge, the Respondent did not apply for or obtain any trade mark registrations related to ALSTOM or ALSTOM POWER INC, nor is he commonly known by these signs. Nor has the Respondent made use of, or prepared to use, the disputed domain name in connection with a *bona fide* offering of goods and services;
- the disputed domain name was registered and is being used in bad faith. It was acquired long after the Complainant's ALSTOM mark became well-known and it is impossible that the Respondent was not aware of it at the time he registered the disputed domain name. The Respondent's use of a privacy service to conceal his identity and the provision of incorrect address details are further indicators of bad faith. Moreover, the Respondent failed to reply to a claim letter sent on behalf of the Complainant seeking a transfer to it of the disputed domain name. The lack of active use of the disputed domain name does not prevent a finding of bad faith.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, these Rules, the Panel shall be entitled to draw such inferences from this omission as it considers appropriate.

Paragraph 4(a) of the Policy requires that the Complainant proves each of the following three elements in respect of the disputed domain name in order to succeed in its Complaint: (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark 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.

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 confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name; see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of its ALSTOM trade mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the generic Top-Level Domain ("gTLD"), that is ".com" in the case of the disputed domain name, is usually disregarded when assessing confusing similarity. The Complainant's ALSTOM mark is reproduced in its entirety within the disputed domain name and is clearly recognizable within it. In these circumstances the addition of the terms "power inc" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.8.

For the above reasons, based on the available record, the Panel finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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 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 the [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise. In particular, the Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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 or services (non-use of the disputed domain name, self-evidently, does not comprise use of it); see paragraph 4(c)(i) of the Policy, and the [WIPO Overview 3.0](#), section 2.2;
- there is no evidence in the record that the Respondent has been commonly known by the disputed domain name; see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3;

- the Respondent is not 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; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4;
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

For the above reasons, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes a list of non-exhaustive circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. However, other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith; see the [WIPO Overview 3.0](#), section 3.2.1. In particular, Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding; see the [WIPO Overview 3.0](#), section 3.3 and by way of example, *Compagnie Générale des Etablissements Michelin v. zhouhaotian*, WIPO Case No. [D2015-1728](#). Although 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement).

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, and the composition of the disputed domain name and finds that, in the circumstances of this case, the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. See also, for example, *Alstom v. Contact Privacy Inc. Customer 1244065242 / Michelle Chung, Chung Limited Co*, WIPO Case No. [D2019-2718](#).

For the above reasons, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy and that the third element of the Policy has been established.

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 <alstompowerinc.com> be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: December 8, 2023