

ADMINISTRATIVE PANEL DECISION

Alstom v. Name Redacted
Case No. D2023-4933

1. The Parties

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

The Respondent is Name Redacted¹.

2. The Domain Name and Registrar

The disputed domain name <alstomgroup.com> is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 27, 2023. On November 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 28, 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) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 29, 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 December 1, 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").

¹ The Respondent appears to have used the name of a Complainant's employee when registering the disputed domain name. In light of the potential identity theft, the Panel has redacted the Respondent's name from this decision. However, the Panel has attached as Annex 1 to this decision an instruction to the Registrar regarding transfer of the disputed domain name, which includes the name of the Respondent. The Panel has authorized the Center to transmit Annex 1 to the Registrar as part of the order in this proceeding and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case. See *Banco Bradesco S.A. v. FAST-12785241 Attn. Bradescourgente.net / Name Redacted*, WIPO Case No. [D2009-1788](#).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 9, 2024.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on January 19, 2024. 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

Founded in 1926, the Complainant is a French multinational rolling stock manufacturer which operates worldwide in rail transport markets. The Complainant employs 74,000 professionals in more than 70 countries.

The Complainant is the owner of numerous trademark registrations for the ALSTOM trademark, including the following:

- United States of America Trademark Registration No. 4236513 for ALSTOM (stylized), registered on November 6, 2012, for goods in International Classes 6, 7, 8, 9, 12, 13, 17, 19, and 24;
- United Kingdom Trademark Registration No. 00900948729 for ALSTOM, registered on August 8, 2001, for goods and services in International Classes 6, 7, 9, 11, 12, 16, 19, 24, 35, 36, 37, 38, 39, 40, 41, and 42;
- International Trademark Registration No. 706292 for ALSTOM, registered on August 28, 1998, for goods and services in International Classes 1, 2, 4, 6, 7, 9, 11, 12, 13, 16, 17, 19, 24, 35, 36, 37, 38, 39, 40, 41, and 42;
- European Union Trademark Registration No. 000948729 for ALSTOM, registered on August 8, 2001, for goods and services in International Classes 6, 7, 9, 11, 12, 16, 19, 24, 35, 36, 37, 38, 39, 40, 41, and 42.

The Complainant also owns and operates domain names containing the ALSTOM trademark, including <alstomgroup.com> created on November 14, 2000, and <alstom.com> created on January 20, 1998, and resolving to the website of the Complainant's group of companies.

Additionally, the Complainant is the owner of the following domain names incorporating the ALSTOM trademark:

- <alstomgroup.net> created on June 2, 2017;
- <alstomgroup.fr> created on June 2, 2017;
- <alstomgroup.eu> created on November 24, 2018.

The disputed domain name was created on October 3, 2023, in the name of a privacy service, and used to redirect to the homepage of the website builder ZOH0. Currently the disputed domain name resolves to an inactive page.

On October 9, 2023, the Complainant sent a trademark claim by email to the Registrar. The Registrar responded the same day with an automatic response inviting the Complainant to file a UDRP Complaint.

On October 9, 2023, the Complainant additionally filled the Registrar's contact form available to contact the Registrant. The Complainant notably asked the Registrant to clarify the reasons of the registration of the domain name <alstomegroup.com> and to transfer this domain. This trademark claim letter did not receive any response.

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.

Identical or Confusingly Similar

The Complainant contends that the disputed domain name and the ALSTOM trademark are confusingly similar.

According to the Complainant's contentions, the disputed domain name incorporates the Complainant's ALSTOM trademark in full, adding the letter "e" at the end of the Complainant's ALSTOM trademark, and then the term "group" followed by the generic Top-Level Domain ("gTLD") ".com".

No Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name.

According to the Complainant's contentions, the Respondent is not commonly known by the disputed domain name, has not used or prepared to use the disputed domain name in connection with a bona fide offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register and/or use the disputed domain name.

Due to the lack of any response to the trademark claims filed by the Complainant prior to initiating of these administrative proceedings, and due to the lack of the Response, there is no evidence of actual or contemplated use in good faith of the disputed domain name by the Respondent.

Registered and Used in Bad Faith

The Complainant submits that the Respondent registered and is using the disputed domain name in bad faith. The Respondent must have been aware of the Complainant's ALSTOM trademark when it registered the disputed domain name.

The Complainant further asserts that the passive holding of the disputed domain name demonstrates the Respondent's bad faith.

The Complainant refers to the following circumstances indicating bad faith registration and use: the disputed domain name resolves to an inactive page; the failure of the Respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; the fact that the Respondent is concealing its identity and the implausibility of any good faith use to which the disputed domain name may be put; the circumstances indicating that there is a likelihood of identity theft.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- i. that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- ii. that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. that the disputed domain name has been registered and is being used in bad faith.

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its decision on the statements and documents submitted and in accordance with the Policy and the Rules. Under paragraph 14(b) of the Rules, where a Party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Under the first element, the Complainant must establish that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: (i) the Complainant must demonstrate that it has rights in a trademark and, if so, (ii) the disputed domain name must be shown to be identical or confusingly similar to the trademark.

According to section 1.1.1 of the [WIPO Overview 3.0](#), the term "trademark or service mark" as used in UDRP paragraph 4(a)(i) encompasses both registered and unregistered (sometimes referred to as common law) marks.

Ownership of a nationally or regionally registered trademark serves as a prima facie evidence that the Complainant has trademark rights for the purposes of standing to file this Complaint. See section 1.2 of the [WIPO Overview 3.0](#). The Complainant submitted evidence that the ALSTOM trademark enjoys protection under national, regional, and international trademark registrations. Thus, the Panel finds that the Complainant's rights in the ALSTOM trademark have been established pursuant to the first element of the Policy.

The disputed domain name consists of the Complainant's ALSTOM trademark in full, adding the letter "e" at the end of the Complainant's ALSTOM trademark, and then the term "group" followed by the gTLD ".com".

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Section 1.9 of [WIPO Overview 3.0](#) states: "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." Further, section 1.11.1 of [WIPO Overview 3.0](#) states: "The applicable 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". The gTLD ".com" will therefore be discounted in the Panel's consideration of confusing similarity.

According to section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within a domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term may however bear on assessment of the second and third elements.

Under section 1.7 of the [WIPO Overview 3.0](#), while each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.

It is the view of the Panel that it is readily apparent that the Complainant's ALSTOM trademark remains recognizable in the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available 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.

The disputed domain name does not resolve to an active website. Prior UDRP panels have found that the passive holding of a disputed domain name is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use. See, by way of example, *Skyscanner Limited v. WhoisGuard Protected, WhoisGuard, Inc. / petrov petya*, WIPO Case No. [DCC2020-0003](#); *Instagram, LLC v. Zafer Demir, Yok*, WIPO Case No. [D2019-1072](#) "The passive holding of the disputed domain name does not amount to use or preparations to use it in connection with a bona fide offering of goods and services. Nor is there any evidence which indicates that the Respondent is commonly known by the disputed domain name. Nor does a passive holding of the disputed domain name comprise a legitimate noncommercial or fair use of it."

The Panel agrees and holds the passive holding of the disputed domain name by the Respondent in this case as evidence that the Respondent has not registered the disputed domain name in connection with any bona fide offering of goods or services.

Having reviewed the available 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.

Moreover, the Complainant has adduced evidence to show that the registration of the disputed domain name is more than likely the result of an identity theft.

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 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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. 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). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainant's trademark, the composition of the disputed domain name, and the circumstances which, based on the balance of probabilities, indicate that the Respondent committed identity theft by pretending to be one of Complainant's employees and using the false contact details, 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.

The Complainant has produced evidence showing that it owns registrations for the ALSTOM trademark, of which registration date significantly precedes the registration date of the disputed domain name.

In addition, the Complainant has credibly submitted that over the years it has developed substantial goodwill in the ALSTOM trademark.

Taking the above facts into consideration, it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#).

Finally, the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good faith use of the disputed domain name.

The Panel finds that the Complainant has established 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 <alstomgroup.com> be transferred to the Complainant.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: February 12, 2014