

ADMINISTRATIVE PANEL DECISION

Arista Networks Inc. v. James Lanman, wolverineflexo
Case No. D2023-5178

1. The Parties

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

The Respondent is James Lanman, wolverineflexo, United States.

2. The Domain Name and Registrar

The disputed domain name <arista.com> (the “Disputed Domain Name”) is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 12, 2023. On December 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 13, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on December 15, 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 amendment to the Complaint on December 21, 2023.

The Center verified that the Complaint together with the amendment to 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 January 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 24, 2024.

The Center appointed Lynda M. Braun as the sole panelist in this matter on January 30, 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

The Complainant is an industry leader in data-driven, client to cloud networking for large data center, campus and routing environments. Launched in 2008, the Complainant went public in June 2014, is listed on the New York Stock Exchange, and currently has more than 9,000 cloud customers. The Complainant has over a dozen offices and delivers its computer networking services to Fortune 500 customers located across six continents.

The Complainant owns the following registered trademarks: ARISTA, United States Trademark Registration No. 4,893,674, registered on January 26, 2016 (with a first use in commerce of January 1, 2008), in international classes 9, 41, and 42; and ARISTA European Union Trademark Registration No. 008473721, registered on February 1, 2010, in international classes 9 and 42 (hereinafter collectively referred to as the "ARISTA Mark").

The Complainant owns the domain name <arista.com>, which resolves to its official website at "www.arista.com", and which provides global access for online customers so that they can reach other consumers worldwide. The Complainant also owns dozens of additional domain names incorporating the ARISTA Mark.

The Disputed Domain Name was registered on June 9, 2023 and initially resolved to an error landing page that stated "This site can't be reached. Check if there is a typo in arirsta.com. If spelling is correct, try running Windows Network Diagnostics." As of the writing of this Decision, the Disputed Domain Name resolves to a similar inactive error landing page that states: "This site can't be reached. arirsta.com's server IP address could not be found."

The Respondent also used the Disputed Domain Name to perpetuate a phishing scheme in which the Respondent configured the Disputed Domain Name for email functions and used the email address to impersonate the Complainant and send fraudulent emails from the Complainant's Credit and Collections Analyst to the Complainant's customers, stating that payments were overdue and requesting wire transfer payments on behalf of the Complainant, whereby the Respondent attempted to induce customers to replace the Complainant's banking information with illegitimate wire instructions. The Complainant subsequently filed an abuse complaint with the Registrar, requesting the suspension of the Disputed Domain Name and revocation of the email services. The Disputed Domain Name was then suspended by the Registrar on November 27, 2023, after which the Complainant commenced this proceeding.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the Disputed Domain Name. Notably, the Complainant contends that:

- the Disputed Domain Name is confusingly similar to the Complainant's trademark as it incorporates a minor misspelling of the ARISTA Mark, specifically adding an extra letter "r" between the letters "i" and "s" in the trademark, and then adding the generic Top-Level Domain ("gTLD") ".com", which additions do not prevent a finding of confusing similarity;

- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because the Complainant has not authorized the Respondent to register a domain name containing the ARISTA Mark, the Respondent was not making a bona fide offering of goods or services, and the Respondent has never been commonly known by the ARISTA Mark, or any similar name;

- the Disputed Domain Name was registered and is being used in bad faith because, among other things, the Respondent uses the Disputed Domain Name as part of an email phishing scheme, the Respondent uses typosquatting in the Disputed Domain Name, and the Disputed Domain Name is being used to disrupt the Complainant's business.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy requires that the Complainant prove the following three elements in order to prevail in this proceeding:

- (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 in respect of the Disputed Domain Name; and
- (iii) the Disputed Domain Name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the ARISTA Mark.

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

It is uncontroverted that the Complainant has established rights in the ARISTA Mark based on its more than two decades of use as well as its registered trademarks for the ARISTA Mark in the United States and the European Union. The consensus view is that "registration of a mark is prima facie evidence of validity". The Respondent has not rebutted this presumption, and therefore the Panel finds that the Complainant has rights in the ARISTA Mark.

The Disputed Domain Name consists of the ARISTA Mark in its entirety, albeit misspelled with an extra letter "r" between the letters "i" and "s" in the trademark. Such a minor modification to a disputed domain name is commonly referred to as "typosquatting" and seeks to wrongfully take advantage of errors by a user in typing a domain name into a web browser. The misspelling of "arista" to "arirista" does not prevent a finding of confusing similarity to the ARISTA Mark. See [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"); see also *Express Scripts, Inc. v. Whois Privacy Protection Service, Inc. / Domaindeals, Domain Administrator*, WIPO Case No. [D2008-1302](#); *Singapore Press Holdings Limited v. Leong Meng Yew*, WIPO Case No. [D2009-1080](#).

Finally, the addition of a gTLD such as “.com” in a domain name is a technical requirement. Thus, it is well established that, as here, such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s ARISTA Mark.

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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving that 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.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a prima facie case. The Respondent has not submitted any arguments or evidence to rebut the Complainant’s prima facie case. Furthermore, the Complainant has not authorized, licensed or otherwise permitted the Respondent to use its ARISTA Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. See Policy, paragraph 4(c).

Further, based on the Respondent’s use made of the Disputed Domain Name to configure emails to perpetuate a phishing scheme does not confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”). See also *CMA CGM v. Diana Smith*, WIPO Case No. [D2015-1774](#) (finding that the respondent had no rights or legitimate interests in the disputed domain name, holding that “such phishing scam cannot be considered a bona fide offering of goods or services nor a legitimate noncommercial or fair use of the Domain Name”). This is precisely what occurred here, where the Respondent sent fraudulent emails created from the Disputed Domain Name to impersonate the Complainant’s Credit and Collections Analyst to inform the Complainant’s customers that payment was overdue.

Thus, the Panel concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, the Panel finds that the Respondent is using the Disputed Domain Name for commercial gain with the intent to mislead by defrauding the Complainant’s customers. Moreover, such use cannot conceivably constitute a bona fide offering of a product/service within the meaning of paragraph 4(c)(i) of the Policy.

In sum, the Panel finds that the Complainant has established an un rebutted prima facie case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name.

Based on the available record, the Panel finds that 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.

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith registration and use of the Disputed Domain Name pursuant to paragraph 4(a)(iii) of the Policy. 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 held that the use of a domain name for illegal activity, as is present here, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds that the Respondent's registration and use of the Disputed Domain Name constitutes bad faith under the Policy due to the Respondent's use of an email phishing scheme in which the Respondent attempted to have the Complainant's customers send payments owed to the Complainant to bank accounts controlled by the Respondent. See [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").

The use of a domain name to intentionally attempt to attract Internet users to a respondent's website or online location by creating a likelihood of confusion with a complainant's mark as to the source, sponsorship, affiliation or endorsement of the registrant's website or online location for commercial gain demonstrates registration and use in bad faith. Here, the Respondent's registration and use of the Disputed Domain Name indicates that such registration and use had been done for the specific purpose of trading upon and targeting the name and reputation of the Complainant. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Moreover, the Panel also finds that the Respondent knew that the Complainant had rights in the ARISTA Mark when registering the Disputed Domain Name, emblematic of bad faith registration and use. It strains credulity to believe that the Respondent did not know of the Complainant or its ARISTA Mark when registering the Disputed Domain Name, as evidenced by the misspelling of the ARISTA Mark as used in the Disputed Domain Name. Thus, the Panel finds that in the present case, the Respondent had the Complainant's ARISTA Mark in mind when registering and using the Disputed Domain Name.

Based on the available record, the Panel finds 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 <arista.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: February 13, 2024