

## **ADMINISTRATIVE PANEL DECISION**

Wartsila Technology Oy Ab v. don kwame  
Case No. D2024-1205

### **1. The Parties**

The Complainant is Wartsila Technology Oy Ab, Finland, represented by SafeNames Ltd., United Kingdom.

The Respondent is don kwame, United States of America (“United States”).

### **2. The Domain Name and Registrar**

The disputed domain name <warsrla.com> (the “Domain Name”) is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 20, 2024. On March 21, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On March 21, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (REDACTED FOR PRIVACY, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 22, 2024, 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 22, 2024.

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 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 15, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 18, 2024.

The Center appointed Nicholas Smith as the sole panelist in this matter on April 26, 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 a Finish company that manufactures and sources energy products including power plants, energy storage systems, and fuel systems. As of 2023 the Complainant had annual net sales of EUR 6 billion, 17,000 employees, and operations in 79 countries.

The Complainant has held a trademark registration for the WÄRTSILÄ Mark in various jurisdictions since 1997, including United States trademark registration number 2,078,313, registered on July 15, 1997, for goods in class 7.

The Domain Name was registered on January 22, 2024. The Domain Name is presently inactive but prior to the commencement of the proceeding resolved to a website (the "Respondent's Website") offering pay-per-click ("PPC") advertisements unrelated to any dictionary meaning of the Domain Name. The Complaint contains evidence of email accounts in the address format "[name]@wartsrla.com" being used in connection with a phishing scam where the Respondent impersonates the Complainant and directs payments to accounts unconnected with the Complainant (and presumably connected to the Respondent).

#### **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 Domain Name.

Notably, the Complainant contends that:

- a) It is the owner of the WÄRTSILÄ Mark, having registered the WÄRTSILÄ Mark in the United States and other jurisdictions. The Domain Name is confusingly similar to the WÄRTSILÄ Mark as it reproduces the WARTSILA element in its entirety and then replaces the "i" with an "r" to create a minor misspelling.
- b) There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Complainant has not granted any license or authorization for the Respondent to use the WÄRTSILÄ Mark. The Respondent is not commonly known by the WÄRTSILÄ Mark, nor does it use the Domain Name for a bona fide purpose or legitimate noncommercial purpose. Rather, the Domain Name is used for a pay-per-click website and emails impersonating the Complainant as part of an illegal scheme to solicit money transfers from customers of the Complainant, which does not provide the Respondent with rights or legitimate interests in the Domain Name.
- c) The Domain Name was registered and is being used in bad faith. The Domain Name is being used for phishing emails that impersonate the Complainant and solicit payment. This amounts to an attempt to perpetuate fraud.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

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

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the Domain Name. Accordingly, the Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

A domain name which consists of a misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for the purpose of the first element. Here the replacement of the letter "i" with the letter "r" and the removal of the umlauts from the WÄRTSILÄ Mark creates such a minor misspelling. [WIPO Overview 3.0](#), section 1.9.

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 record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the 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 Domain Name.

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 Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- The Respondent (as an individual, business, or other organization) has not been commonly known by the Domain Name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- The Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- The record contains no other factors demonstrating rights or legitimate interests of the Respondent in the Domain Name.

The use of the Domain Name for a parking page with pay-per-click links unrelated to a dictionary meaning of the Domain Name does not amount to a bona fide offering of goods or services. The Panel notes the statements in the [WIPO Overview 3.0](#) on the question of whether “parked” pages comprising pay-per-click links support respondent rights or legitimate interests. The section 2.9 of the WIPO Overview notes that:

“Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users.

Panels have recognized that the use of a domain name to host a page comprising PPC links would be permissible – and therefore consistent with respondent rights or legitimate interests under the UDRP – where the domain name consists of an actual dictionary word(s) or phrase and is used to host PPC links genuinely related to the dictionary meaning of the word(s) or phrase comprising the domain name, and not to trade off the complainant’s (or its competitor’s) trade mark.”

In the present case, the Domain Name has no obvious inherent meaning and hence the Respondent’s use of the confusingly similar Domain Name to host a parking page with pay-per-click links does not, absent any further explanation, provide the Respondent with rights or legitimate interests in the Domain Name.

Furthermore, the Respondent uses the Domain Name in connection with a phishing scheme, namely to send emails passing itself off as the Complainant to Complainant’s customers soliciting payment and directing payment be made into accounts unconnected to the Complainant. Panels have held that the use of a domain name for illegal activity such as, in the present case, phishing can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Panels have held that the use of a domain name for illegal activity (e.g., phishing) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the Domain Name constitutes bad faith under the Policy. The Domain Name has been used for phishing e-mails impersonating the Complainant directing payment be made into accounts unconnected to the Complainant.

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 Domain Name <warsrla.com> be transferred to the Complainant.

*/Nicholas Smith/*

**Nicholas Smith**

Sole Panelist

Date: May 7, 2024