

ADMINISTRATIVE PANEL DECISION

Wärtsilä Technology Oy Ab v. Name Redacted

Case No. D2024-4278

1. The Parties

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

The Respondent is Name Redacted.¹

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 17, 2024. On October 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 17, 2024, 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 October 21, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Center also sent an email communication about the language of the proceeding as the registrar confirmed that the language of the registration agreement was German. The Complainant filed an amended Complaint in English on October 23, 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

¹The Respondent appears to have used the name of a third party (an employee of the Complainant) 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Annex 1 to the Registrar as part of the order in this proceeding, and has indicated Annex 1 to this decision shall not be published due to the exceptional circumstances of this case.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](#).

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 in English and German of the Complaint, and the proceedings commenced on October 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 19, 2024.

The Center appointed Federica Togo as the sole panelist in this matter on November 22, 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

It results from the Complainant’s undisputed allegations that it is a Finnish corporation which operates in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. It has a strong international presence with operations in over 280 locations across 79 countries with over 17,000 employees. It operates its services internationally, with power plants in locations including but not limited to, Hungary, the United States of America, Indonesia, Kenya, the United Kingdom, and the Caribbean. It was established and has been operating continually since 1834.

The Complainant is the registered owner of many trademarks worldwide for WARTSILA, including European Union trademark registration No. 011765294, registered on September 18, 2013, for goods and services in classes 7, 9, 11, 12, 35, 37, 41, and 42.

In addition, the Complainant uses the domain name <wartsila.com> for its main website which it uses to advertise its products and services.

The disputed domain name was registered on August 21, 2024 and it resolves to an inactive webpage. Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain name has been used to send email to third parties, while pretending to be an employee of the Complainant, seemingly in order to obtain improper payment.

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 confusingly similar to the Complainant’s trademark since it consists of a common, obvious, and intentional misspelling of the Complainant’s WARTSILA mark. Specifically, the Respondent has engaged in the common practice of “typosquatting” by registering a lookalike domain name. The spelling of the mark is minimally altered by the inclusion of an additional letter “r”.

The Complainant contends that its trademark is distinctive and has acquired reputation.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. According to the Complainant, the Respondent does not have any trademark rights to any term used in the disputed domain name. There is also no evidence that the Respondent retains any unregistered trademark rights to any term used in the disputed domain name. Neither has the Respondent

received any license from the Complainant to use a domain name featuring its trademark. The Respondent posed as actual employees of the Complainant in order to send phishing emails, which were sent from the disputed domain name, which spoofs the Complainant's official domain name <wartsila.com>, to solicit "funds urgently" from the phishing target. Furthermore, the Complainant contends that this is a case of identity theft. According to the information provided by the Registrar Verification the Respondent's name corresponds to the name of an employee of the Complainant. The abovementioned identity has also been misused in phishing attacks carried out from the disputed domain name. Therefore, the Complainant requests that the Respondent's name be redacted from the record upon publication of the decision

Finally, the Complainant contends that the disputed domain name was registered and was being used in bad faith. According to the Complainant, the WÄRTSILÄ / WARTSILA name accrued substantial goodwill and a global reputation for providing energy and marine services. The Respondent specifically targeted the Complainant when registering a domain name identical to the Complainant's mark, altered by the additional letter "r", so that the Respondent could engage in fraudulent practices. The use of the disputed domain name to host email addresses designed to appear closely similar to the Complainant's trademark corroborates the Respondent's prior knowledge. The layout of the fraudulent email, and the use of names belonging to the Complainant's actual employees, indicatively confirms the Respondent's awareness of the Complainant's business operations and rights.

B. Respondent

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

6. Discussion and Findings

6.1. Procedural issues – Language of the proceedings

Paragraph 11(a) of the Rules provides that "unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding". The Panel may also order that any documents submitted in a language other than that of the proceeding be translated.

However, as noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition (see [WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition](#), ("[WIPO Overview 3.0](#)"), section 4.5). Accordingly, account should be taken of the risk that a strict and unbending application of paragraph 11 of the Rules may result in delay, and considerable and unnecessary expenses of translating documents.

The Center notified both parties of the potential language issue, inviting the Complainant to 1) either provide satisfactory evidence of an agreement between the Complainant and the Respondent to the effect that the proceedings should be in English; 2) either translate the complaint in German; or 3) submit a supported request for English to be the language of the administrative proceedings (*e.g.*, by reference to pre-Complaint correspondence between the parties, parties' identity and any other evidence of familiarity with the requested language) and similarly providing the Respondent with an opportunity to comment on or object to any such language request that may be made by the Complainant.

In the Amended Complaint, the Complainant submitted a request that English be the language of the proceedings affirming the following: the Respondent is (purportedly) based in Canada, and has used a United States based registrar, both countries being majority English-speaking. The registrar's Registration Agreement is published in English, and is the controlling version. There is no evidence to suggest that German is the Respondent's first language; Phishing attacks carried out by the Respondent through the

disputed domain name were not in the German language (but in Spanish language); the Respondent's email address, itself contains English words; The Complainant's representatives are based in the United Kingdom and requiring a translation would result in the incurrence of additional expense and unnecessary delay, which would be particularly inequitable given the Respondent's conduct in obscuring its true identity. The Respondent did not comment on the language of the proceeding.

In the light of the above, the Center provided the Respondent in both English and German with the Notification of Complaint and Commencement of Administrative Proceeding informing the Parties that it would: 1) accept the Complaint as filed in English; 2) accept a Response in either English or German; 3) appoint a Panel familiar with both languages, if available.

In deciding whether to allow the proceedings to be conducted in a language other than the language of the Registration Agreement, and to require the Complainant in an appropriate case to translate the Complaint into the language of that agreement, the Panel must have regard to all "the relevant circumstances". The factors that the Panel should take into consideration include whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without at the same time causing injustice to the parties (see e.g. *Volkswagen AG v. Nowack Auto und Sport - Oliver Nowack*, WIPO Case No. [D2015-0070](#); *SWX Swiss Exchange v. SWX Financial LTD*, WIPO Case No. [D2008-0400](#)).

In the case at issue, this Panel considers that conducting the proceedings in English would not be disadvantageous to the Respondent, since it results from the Complainant's undisputed allegations that the Respondent can understand the language of the Complaint, the Respondent is based in Canada, and has used a United States based registrar, both countries being majority English-speaking and the Respondent's email address contains English words.

The Panel is therefore prepared to infer that the Respondent is able to understand and communicate in English.

Furthermore, the Panel finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into German. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay.

Finally, the Panel notes that the Respondent did neither object to the Complaint being in English nor to the request made that the proceedings be conducted in English. The Respondent was given a fair opportunity to present his case, to raise objections as to the request for English to be the language of proceedings or to inform the Center on his language preference. He has however chosen not to comment on any of these issues.

Taking all these circumstances into account, this Panel finds that it is appropriate to exercise its discretion, according to paragraph 11(a) of the Rules and allow the proceedings to be conducted in English.

6.2. Substantive issues

Paragraph 15(a) of the Rules instructs this Panel to "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 requires a complainant to prove each of the following three elements in order to obtain an order that each disputed domain name be transferred or cancelled:

(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 has been registered and is being used in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

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 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 entirety of the mark is reproduced 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.

In addition, it is the view of this Panel that the addition at the end of the disputed domain name of the letter "r" results to be a common, obvious, or intentional misspelling of the Complainant's trademark, and cannot prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark since the disputed domain name contains sufficiently recognizable aspects of the relevant mark (see [WIPO Overview 3.0](#) at 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 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 Panel notes that the disputed domain name consists of a common, obvious, or intentional misspelling of the Complainant's registered trademark WARTSILA, so that this Panel finds it most likely that employing a misspelling in this way signals an intention on the part of the Respondent to confuse users seeking or expecting the Complainant. The trademark WARTSILA is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondent registered the disputed domain name with the intention to take advantage of the Complainant's reputation by registering a domain name containing the Complainant's trademark with the intent to mislead Internet users.

Panels have held that the use of a domain name for illegal activity here, claimed phishing, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. It results from the undisputed evidence before the Panel that the disputed domain name has been used to send emails to third parties, while pretending to be an employee of the Complainant, seemingly in order to obtain improper payment. The Panel considers this evidence as sufficient to support the Complainants' credible claim of illegal activity by the Respondent.

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.

As explained above, it results from the undisputed evidence submitted by the Complainant that the disputed domain name was registered using the name of one of the Complainant's employee and has been used for sending fraudulent email in the name of an employee of the Complainant in order to solicit payment. In addition, the use of the disputed domain name in such an illegal scheme additionally demonstrates that the Respondent not only knew of the Complainant, its business and marks, but also attempted to pass itself off as the Complainant by the name of a Manager- Partner of the Complainant in order to solicit payment.

Panels have held that the use of a domain name for illegal activity here, claimed phishing, impersonation/passing off, or other types of fraud 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 disputed domain name constitutes bad faith under the Policy.

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 <wartsilar.net> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: December 5, 2024