

ADMINISTRATIVE PANEL DECISION

Wartsila Technology Oy Ab v. DAVE DAVE, DAVIDSON LLC
Case No. D2024-4510

1. The Parties

Complainant is Wartsila Technology Oy Ab, Finland, represented by SafeNames Ltd., United Kingdom (“UK”).

Respondent is DAVE DAVE, DAVIDSON LLC, Germany.

2. The Domain Name and Registrar

The Domain Name <wantsila.com> (the “Domain Name”) is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 1, 2024. On November 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 4, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to Complainant on November 4, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on November 5, 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 Respondent of the Complaint, and the proceedings commenced on November 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 26, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on November 27, 2024.

The Center appointed Dinant T. L. Oosterbaan as the sole panelist in this matter on December 9, 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

Complainant is a Finnish corporation, established in 1834, which operates in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. As of 2023, Complainant had net sales of EUR 6 billion with over 17,000 employees. Complainant has a strong international presence with operations in over 280 locations across 79 countries.

Complainant owns multiple trademarks for WÄRTSILÄ, including European Union trademark WÄRTSILÄ, number 000838466 and registration date February 21, 2000.

In addition, Complainant runs multiple websites including its main website using the domain name <wartsila.com>.

The Domain Name was registered on April 3, 2024.

The Domain Name does not resolve to an active website. The Domain Name has been used for a fraudulent scheme.

The trademark registrations of Complainant were issued prior to the registration of the Domain Name.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, Complainant contends that the Domain Name is confusingly similar to its WÄRTSILÄ/WARTSILA trademark. The Domain Name differs from the WÄRTSILÄ/WARTSILA mark by the replacement of the letter "r" with the letter "n". The substitution of letters in this way is commonly referred to as "typo-squatting". It is established under the UDRP that deliberate misspelling of a disputed domain name is not sufficient to distinguish a disputed domain name from a complainant's trademark.

According to Complainant, Respondent lacks a right or a legitimate interest in the Domain Name.

Complainant submits evidence that the Domain Name <wantsila.com> has been used by Respondent to carry out phishing activity by way of scam emails using the email address "[...]@wantsila.com".

Respondent was impersonating Complainant in order to solicit payments from Complainant and their clients to a fraudulent account. As a result, the Registrar suspended the Domain Name. Complainant submits that UDRP panels have categorically held that the use of a domain name for illegal activity can never confer rights or legitimate interests on a respondent.

According to Complainant, Respondent registered and uses the Domain Name in bad faith.

Complainant's trademark registrations predate the creation date of the Domain Name by 27 years. If Respondent were to have exercised the simplest degree of due diligence, they would have been made aware of Complainant's rights to the WÄRTSILÄ/WARTSILA mark. This fact, in addition to Respondent's

attempt to emulate Complainant's mark through the substitution of characters, deems it highly implausible that Respondent was unaware of Complainant's rights in the WÄRTSILÄ/WARTSILA mark at the time of registration. Complainant also asserts that the Domain Name replicates the WARTSILA trademark almost entirely by replacing the letter 'r' with the letter 'n' (commonly known as "typo-squatting"). Previous UDRP panels have consistently found that typo-squatting cases show strong evidence of a respondent's bad faith. For the above reasons, Complainant submits that Respondent registered the Domain Name in bad faith. According to Complainant the Domain Name was used to intentionally mislead Complainant and its customers for financial gain by purporting to be Complainant through transmitting phishing emails. Respondent distributed the aforementioned emails to Complainant's customers in an attempt to solicit payments. Respondent's use of the Domain Name to engage in phishing is evidence of bad faith use.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the 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 that a complainant proves each of the following three elements to obtain an order that the disputed domain name should 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.

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.

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 Domain Name incorporates the WÄRTSILÄ/WARTSILA trademark in its entirety, with the substitution of the letter "r" in the trademark by the letter "n". Many UDRP panels have found that a disputed domain name is identical or confusingly similar where the relevant trademark is recognizable within the disputed domain name, especially in the case of a misspelling of complainant's trademark (i.e. typo-squatting). [WIPO Overview 3.0](#), sections 1.7 and 1.9.

The generic Top-Level Domain ("gTLD") ".com" is disregarded under the first element confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

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 Respondent may demonstrate rights or legitimate interests in a 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the Domain Name. Respondent has not rebutted Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Domain Name such as those enumerated in the Policy or otherwise.

Based on the undisputed submission and evidence provided by Complainant, as summarized above, Respondent used the Domain Name to carry out phishing activity by way of scam emails using the email address “[...]@wantsila.com”. Respondent was impersonating Complainant in order to solicit payments from Complainant and their clients to a fraudulent account.

Panels have held that the use of a domain name for illegal activity such as phishing, impersonation and sending deceptive emails can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. The Panel does not consider such use a bona fide offering of goods or services, nor a legitimate noncommercial or fair use of the Domain Name. Respondent is also not commonly known by the Domain Name nor has it acquired any trademark or service mark rights.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel finds that the Domain Name has been registered and is being used in bad faith. Noting the status of the WÄRTSILÄ/WARTSILA mark and the overall circumstances of this case, the Panel finds it more likely than not that Respondent knew or should have known Complainant’s WÄRTSILÄ/WARTSILA mark. The registration of the Domain Name in awareness of the WÄRTSILÄ/WARTSILA mark and in the absence of rights or legitimate interests amounts under these circumstances to registration in bad faith.

In particular the Panel takes into account that previous panels have held that the use of a domain name for illegal activity, such as applicable to this case phishing, impersonation and sending deceptive emails, constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

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, <wantsila.com>, be transferred to Complainant.

/Dinant T. L. Oosterbaan/

Dinant T. L. Oosterbaan

Sole Panelist

Date: December 19, 2024