

ADMINISTRATIVE PANEL DECISION

Alstom v. Liz Kirschner

Case No. D2022-3848

1. The Parties

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

The Respondent is Liz Kirschner, United States of America.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2022. On October 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 14, 2022, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 20, 2022, 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 October 20, 2022.

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 October 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 14, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 15, 2022.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on November 28, 2022. 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 French power generation and transmission, and rail infrastructure company, which was established in 1928 and currently employs 36,000 professionals in more than 60 countries, including the United States of America, where the Respondent purportedly resides.

The Complainant holds trademark registrations for the term “Alstom” in numerous jurisdictions around the world, such as, amongst others:

- US Trademark No. 75565686 (word/device mark), filed October 9, 1998 and registered on November 2, 2004;
- US Trademark No. 85250501 (word mark), filed February 24, 2011 and registered on July 22, 2014;
- International Registration No. 98727759 (word mark), filed April 10, 1998, with designations for 57 countries all over the world;
- European Union Trademark Registration No. 000948729 (word mark), filed September 30, 1998, registered on August 8, 2001.

These registrations will jointly be referred to in singular as the “Trademark”.

The Complainant owns many companies, which use “Alstom” as part of their respective trade names, which together form the “Alstom” group.

The Complainant is also the registrant of numerous domain names under various generic and country code Top Level Domain s (“TLD”) that reflect its Trademark, such as, amongst others:

- <alstom.com> registered since 1998;
- <alstomgroup.com> registered since 2000;
- <alstomgroup.net> registered since 2017;
- <alstomgroup.fr> registered since 2017;
- <alstomgroup.eu> registered since 2018;

The disputed domain name was registered on May 21, 2022. It used to resolve to a parking page displaying commercial links targeting, among others, the Complainant’s field of activity. Following the email to the Registrar, the content accessible at “www.alstomgroop.com” appears to have been removed. At present, the disputed domain name does not resolve to any active website.

The Complainant claims that on July 4, 2022 it sent a communication to the Respondent, copying in the Registrar, via the contact link in the Whois extract, in order to assert their rights to the Trademark and requesting that the Respondent immediately deletes the disputed domain name or transfers it to the Complainant. No response was received from the Respondent, although the Complainant has sent four reminders.

The Complainant also addressed a claim to the Registrar on July 4, 2022, requesting that they:

- cut off access to all content accessible at the disputed domain name;
- provide the Complainant with the Respondent’s contact information so that they may attempt to settle.

In the absence of a satisfactory response, four reminders were also sent. No satisfactory response was received.

5. Parties' Contentions

A. Complainant

The Complainant alleges that the disputed domain name is confusingly similar to the Trademark, resulting in the combination of the Trademark and of the element "groop" and of the suffix ".com". The disputed domain name only differs by one letter, which is barely noticeably different, from the denomination "group" and will be directly perceived by Internet users as referring to the Complainant's group of companies. It also only differs by one letter from the <alstomgroup.com> domain name of which the Complainant is also the holder and user, and which is also used to support the email addresses of all employees of the Complainant's group of companies.

According to the Complainant the Respondent has no rights or legitimate interests in respect of the disputed domain name because the Respondent has failed to prove such rights or interests, the Respondent is not affiliated in any way to the Complainant, and the Complainant has not authorized, licensed or permitted the Respondent to register or use a domain name incorporating the Trademark. The Complainant further asserts that the Respondent has not applied for or obtained any trademark registrations related to the term "Alstom" and is not commonly known under the name "Alstom".

Further, the Complainant alleges that the Respondent is using the disputed domain name in bad faith:

- the disputed domain name incontestably reproduces the Complainant's Trademark, and was acquired long after ALSTOM marks became well known;
- in view of the well-known character of the Trademark, it is virtually impossible that the Respondent was not aware of the Complainant's activities, at the time it registered the disputed domain name;
- the Respondent remained silent and did not reply to the Complainant's claim and reminders in order to put forward its legitimate interests or rights to the disputed domain name, while it had the opportunity to do so;
- the Respondent attempts by any means to conceal its identity, firstly by registering the disputed domain name via an anonymization company, and secondly by using false contact information, as the indicated address does not exist, the area code in the telephone number does not correspond to the location where the address provided is situated, and the email address provided shows no apparent link to the Respondent's name;
- the disputed domain name is a clear case of deliberate typo-squatting;
- being virtually identical and confusingly similar to the Complainant's prior domain name and Trademark, in that "groop" is a clear misspelling of the term "group".

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

The Respondent did not file a Response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the consensus view of UDRP panels is that a respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in this proceeding. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the panel shall draw such inferences as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, the Complainant must prove that:

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

A. Identical or Confusingly Similar

The Complainant has provided evidence of its registrations for the Trademark, which incorporate the word 'Alstom', both in the United States and in other countries and has thereby established its rights in the Trademark.

The Panel agrees with the Complainant that the disputed domain name is confusingly similar to its Trademark, resulting in the combination of the Complainant's Trademark ALSTOM and of the element "groop", a clear misspelling of the term "group" which only refers to a group of companies, and of the suffix ".com". The addition of the TLD ".com" is irrelevant when evaluating the confusing similarity of a disputed domain name, as it results from a technical constraint.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The overall burden of proof on this element rests with the Complainant. However, it is well established by previous UDRP decisions that once a complainant establishes a *prima facie* case that a respondent lacks rights or legitimate interests in a domain name, the burden of production shifts to the respondent to rebut the complainant's contentions. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (*Danzas Holding AG, DHL Operations B.V. v. Ma Shikai*, WIPO Case No. [D2008-0441](#); [WIPO Overview 3.0](#), section 2.1 and cases cited therein).

In this particular case, the Complainant alleges that the Respondent lacks rights to or legitimate interests in the disputed domain name for the reasons set out in section 5.A above.

The Panel finds that the Complainant has fulfilled the obligation to establish *prima facie* evidence that the Respondent has no rights to or legitimate interests in the disputed domain name. Because of its failure to submit a response, the Respondent has not refuted the arguments of the Complainant and/or shown rights to or legitimate interests in the disputed domain name.

In the circumstances the Respondent has not produced any evidence of its rights or legitimate interests in the disputed domain name and the Complainant is entitled to succeed on the second element of the test in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Many previous panels have found the ALSTOM mark to be well-known (recently for instance *Alstom v. Registration Private, Domains By Proxy, LLC / maycol nova*, WIPO Case No. [D2021-4184](#); *Alstom v. ben wang, wang ben*, WIPO Case No. [D2022-0756](#)), and the Panel in the current dispute has no reason to doubt such finding of the ALSTOM mark being well-known. The fact that the Respondent has included the well-known ALSTOM mark in its entirety and has added the term "groop" in the creation of the disputed domain name, while the Complainant owns and has been using the disputed domain name <alstomgroup.com>, leads the Panel to believe that the Respondent was or must have been aware of the ALSTOM mark and the specific use made by the Complainant of its domain name when registering the disputed domain name. The Panel is therefore satisfied that the disputed domain name was registered in bad faith.

The Complainant must also prove that the Respondent uses the disputed domain name in bad faith. Under the circumstances at hand, the Panel finds that the passive holding of the disputed domain name constitutes use in bad faith. Section 3.3 of the [WIPO Overview 3.0](#) states the following on this issue:

“From the inception of the UDRP, panelists 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. While 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, (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.”

In this case, the Panel concludes that the following cumulative circumstances are indicative of the Respondent’s passive holding of the disputed domain name in bad faith: (i) the fact that the ALSTOM mark is well-known, and that the Respondent is found to have likely had the ALSTOM mark in mind when it registered the disputed domain name; (ii) the similarity between the intensively used domain name of the Complainant and the disputed domain name; (iii) the lack of a response from the Respondent to the Complainant’s demand letters and reminders; (iv) the lack of a Response in the current procedure; (v) the undisputed fact that the Respondent provided fake contact information and likely used a fake identity; and (vi) the use of a privacy service in an attempt to conceal its identity.

The Panel therefore finds that the Complainant has also satisfied the third and final requirement of paragraph 4(a) 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 <alstomgroop.com> be transferred to the Complainant.

/Richard C.K. van Oerle/

Richard C.K. van Oerle

Sole Panelist

Date: December 15, 2022