

ADMINISTRATIVE PANEL DECISION

Wärtsilä Technology Oy Ab v. Stephan Obrien
Case No. D2023-3087

1. The Parties

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

The Respondent is Stephan Obrien, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <wartsia.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 July 18, 2023. On July 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 19, 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 (Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 21, 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 amended Complaint on July 21, 2023.

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 July 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 17, 2023.

The Center appointed Masato Dogauchi as the sole panelist in this matter on August 21, 2023. 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

Whereas the Respondent has not submitted any response, the following information from the Complaint is found to be the factual background of this case.

The Complainant is a Finnish corporation which operates in the field of technologies and lifecycle solutions for the marine and energy markets, placing an emphasis on innovation, efficiency and data analytics to maximize the environmental and economic performance of its customers' vessels and power plants. The Complainant was established and has been operating continually since 1834. In its early years, the Complainant operated as a sawmill and iron works company. It gradually moved into other fields and began producing its first commercial engines in 1959. The Complainant has made a number of acquisitions over the course of its history. As of 2021, the Complainant operated in over 200 locations across 68 countries and had net sales of EUR 4.8 billion with over 17,000 employees.

The Complainant owns the WÄRTSILÄ/WARTSILA trademarks (collectively the "WARTSILA trademark or WARTSILA mark") across a number of jurisdictions, such as:

- International trademark WÄRTSILÄ, No. 1005789, registered on May 22, 2009;
- European Union trademark WÄRTSILÄ, No. 008304149, registered on November 25, 2009; and
- European Union trademark WARTSILA, No. 011765294, registered on September 18, 2013.

Furthermore, the Complainant operates from its main domain name <wartsila.com> registered on January 5, 1996, which it uses to advertise its products and services.

The disputed domain name <wartsia.com> was registered on February 17, 2023. On the next day, an email was sent to one of the customers of the Complainant from the email address "[...].@wartsia.com" to solicit money transfers. The disputed domain name does not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant's contentions are divided into three parts as follows:

First, the Complainant asserts that the disputed domain name is confusingly similar to its WARTSILA mark. The issue of confusing similarity should be adjudicated upon by utilizing a side-by-side comparison. In this case, the disputed domain name matches the Complainant's WARTSILA mark except for the subtraction of the letter "l". The Complainant contends that the exclusion of the letter "l" is not sufficient to distinguish the disputed domain name from the Complainant's WARTSILA mark. The disputed domain name should be considered to constitute an example of typosquatting. The generic Top-Level Domain ("gTLD") ".com" should be disregarded for the purposes of determining the confusing similarity.

Second, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name, since the Respondent is not identified as the disputed domain name. In addition, the Complainant contends that, to the best of the Complainant's knowledge, the Respondent does not have any rights to the term "Wartsila" or any other term used in the disputed domain name. The Complainant also contends that, since the disputed domain name is held passively and does not resolve to a webpage, the Respondent is not offering any goods or services from the disputed domain name. In addition, the Complainant submits that the disputed domain name has been used to carry out phishing activity by way of scam emails using the email address "[...].@wartsia.com" in which the Respondent was pretending to be an employee of the Complainant in order to solicit money transfers from the customers of the Complainant.

Third, the Complainant asserts that the disputed domain name has been registered and is being used in bad faith. According to the Complainant, substantial goodwill has accrued since the Complainant's establishment in 1834, the "Wartsila" name has become well known for energy and marine services. The Complainant asserts that the Respondent has engaged in typosquatting, targeting the Complainant in hopes of catching Internet users that misspell the Complainant's main platform at the domain name <wartsila.com>, and that such tactics indicate bad faith registration. With regard to the bad faith use, the Complainant contends that the fact that the disputed domain name was used to intentionally mislead the Complainant's customers and make a commercial gain by purporting to be the employees of the Complainant and transmitting phishing emails should be an evidence of bad faith use. Finally, even though the disputed domain name does not currently resolve to a functional webpage, such passive use should not preclude a finding of bad faith use.

B. Respondent

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

6. Discussion and Findings

In accordance with the Rules, paragraph 15(a), a panel shall decide a case on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable. Since the Respondent has not made any substantive arguments in this case, the following decision is rendered on the basis of the Complainant's contentions and other evidence submitted by the Complainant.

In accordance with the Policy, paragraph 4(a), in order to qualify for a remedy, the Complainant must prove each of the following:

- (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

The Panel finds that the Complainant has provided evidence to show it has rights in the WARTSILA trademark.

The first part of the disputed domain name "wartsia" is different from the Complainant's WARTSILA trademark in that the letter "l" is omitted in the disputed domain name. This case is determined to be a typical example of typosquatting. On the other hand, the last part of the disputed domain name, which represents one of the gTLDs, is irrelevant in the determination of the confusing similarity between the disputed domain name and the WARTSILA trademark.

Therefore, the Panel finds that the disputed domain name, being a typosquatted version of the Complainant's WARTSILA trademark, is confusingly similar to the trademark in which the Complainant has rights. The above requirement provided for in paragraph 4(a)(i) of the Policy is accordingly satisfied.

B. Rights or Legitimate Interests

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests (see section 5.A. above), the burden of production on this element therefore shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. There is no evidence that shows the Respondent is commonly known by the name "Wartsia."

The disputed domain name resolves to an inactive page. This suggests that the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or for any legitimate noncommercial or fair use. The disputed domain name has been used to carry out phishing activity by way of scam emails using the email address “[...]@wartsia.com” in which the Respondent was pretending to be an employee of the Complainant in order to solicit money transfers from one of the customers of the Complainant. The use of the disputed domain name for illegal activity can never confer rights or legitimate interests on the Respondent.

Since the Respondent did not reply to the Complaint in this proceeding, the Panel finds on the available record that the Complainant has established an unrebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The above requirement provided for in paragraph 4(a)(ii) of the Policy is accordingly satisfied.

C. Registered and Used in Bad Faith

The Complainant is a well-known company in energy and marine services worldwide. In consideration of the Complainant’s large business using the WARTSILA trademark, it is highly unlikely that the Respondent would not have known of the Complainant’s rights in the trademark at the time of the disputed domain name’s registration. In addition, since no evidence is found showing that the disputed domain name bears a reasonable relevance to the name of the Respondent and since the term “Wartsila” is so unique and the use of the disputed domain name for fraudulent purposes, there can be found no reasonable possibility of fortuity in the Respondent’s innocent registration of the disputed domain name.

On the other hand, with regard to the bad faith use, the fact that an email was sent to one of the customers of the Complainant from the email address “[...]@wartsia.com” to solicit money transfers shows that the disputed domain name was used to carry out phishing activity, since the email address includes the name of an existing employee of a group company of the Complainant and the employee’s email address is “[...]@wartsila.com”. Such way of use of the disputed domain name is a typical example of the bad faith use.

The Respondent did not reply to the Complaint in this proceeding.

Considering the above, the Panel finds that the disputed domain name has been registered in bad faith and is being used in bad faith. The above requirement provided for in paragraph 4(a)(iii) of the Policy is accordingly satisfied.

In conclusion, all three cumulative requirements as provided for in paragraph 4(a) of the Policy are determined to be satisfied.

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 <wartsia.com> be transferred to the Complainant.

/Masato Dogauchi/

Masato Dogauchi

Sole Panelist

Date: September 4, 2023