

ADMINISTRATIVE PANEL DECISION

Alstom v. Pankaj Klosco

Case No. D2023-3523

1. The Parties

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

The Respondent is Pankaj Klosco, India.

2. The Domain Name and Registrar

The disputed domain name <alstomzurich.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 21, 2023. On August 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 22, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 23, 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 August 24, 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 August 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 18, 2023.

The Center appointed Angelica Lodigiani as the sole panelist in this matter on September 20, 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

The Complainant is a French company established in 1928. It is a global leader in the field of transport infrastructures, employing more than 34,000 employees in more than 60 countries, including India and Switzerland. From April 1, 2022 to December 31, 2022, the Complainant's order intake reached EUR 15.2 billion. In India, the Complainant owns six industrial sites, and two major engineering centers. To date, the Complainant employs 9000 people in India, where they manufacture the most powerful Indian electric locomotive. The Complainant also operates in Switzerland, where it established its presence more than 140 years ago. The Complainant employs 800 people in Switzerland in three different main sites. The Complainant has manufactured the ICN train, which is a high-speed train in circulation in Switzerland since more than 20 years.

The Complainant owns various ALSTOM trademark registrations, among which the following:

- ALSTOM (word mark), Indian registration No. 819279, registered on September 15, 1998, for goods in class 12;
- ALSTOM (figurative mark), United States registration No. 4236513, registered on November 6, 2012, for goods in classes 1, 6, 7, 9, 12, 13, 17, 19 and 24;
- ALSTOM (word mark), United Kingdom registration No. UK00900948729, registered on August 8, 2001, for goods and services in classes 6, 7, 9, 11, 12, 16, 19, 24, 35, 36, 37, 38, 39, 40, 41, and 42;
- ALSTOM (word mark), International registration No. 706292, of August 28, 1998, designating various jurisdictions including Switzerland, for goods and services in classes 1, 2, 4, 6, 7, 9, 11, 12, 13, 16, 17, 19, 24, 35, 36, 37, 38, 39, 40, 41, and 42;
- ALSTOM (figurative mark), International registration No. 1528691, of December 4, 2019, designating various jurisdictions including India and Switzerland, for goods and services in classes 9, 12, 37, and 42;
- ALSTOM (word mark), European Union registration No. 948729, registered on August 8, 2001, for goods and services in classes 6, 7, 9, 11, 12, 16, 19, 24, 35, 36, 37, 38, 39, 40, 41, and 42;

The Complainant is also the owner of numerous domain names comprising the trademark ALSTOM, among which <alstom.com>, registered on January 20, 1998, which resolves to the Complainant's main website and <alstomgroup.com>, registered on November 14, 2000.

The disputed domain name was registered on April 25, 2023, and is connected to a webpage featuring the message "coming soon...Our website is under construction" and a digital clock (counting down) with an invitation to the visitor to follow for updates. On May 22, 2023, the Complainant sent an email to the Registrar, informing of the ALSTOM prior trademark rights, and requesting to disclose the Registrant's identity and contact details and to suspend the disputed domain name and any related websites and email addresses. Despite two reminders, the Complainant did not receive an answer.

5. Parties' Contentions

A. Complainant

The Complainant maintains that the disputed domain name is confusingly similar to its ALSTOM trademark as it incorporates it entirely and the ALSTOM mark is directly recognizable within the disputed domain name. Moreover, the addition of the geographical term "Zurich" cannot prevent a finding of confusing similarity.

The Complainant further maintains that the Respondent lacks rights or legitimate interests in the disputed domain name, because the Respondent is not affiliated with the Complainant and the Complainant never

authorized the Respondent to register the disputed domain name. Moreover, to the best of the Complainant's knowledge, the Respondent did not apply for or obtain any trademark registration for the words "Alstom" or "Alstom Zurich" and is not commonly known by one of these names. The disputed domain name resolves to an "Under Construction" webpage. Since at least May 2023, this webpage announces a launch in two days, although the relevant website never became active. Therefore, the Respondent has not used nor made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, the Respondent's actions are in breach of the Complainant's trademark rights and detrimental to the Complainant.

Lastly, the Complainant maintains that the Respondent has registered and is using the disputed domain name in bad faith. According to the Complainant, the ALSTOM trademark is well known. It is therefore impossible that the Respondent was not aware of the Complainant and its trademark at the time of the registration of the disputed domain name. The Respondent's contact details provided at the time of the registration of the disputed domain name are inconsistent. The Respondent provided an email address suggesting a connection with a company providing software development services. However, the telephone number and the address of this company are different from the telephone number and address that the Respondent provided at the time of the registration of the disputed domain name. Moreover, the Complainant did not find any connection between the Respondent and this company. Hence, according to the Complainant, the contact details appearing on the Whois of the disputed domain name are probably false.

The disputed domain name is passively held. Since the disputed domain name reproduces a well-known trademark of the Complainant, the fact that it is not actively used cannot prevent a finding of bad faith. In this case, the Respondent is holding the disputed domain name to take unfair advantage of the reputation of the Complainant's trademark and its only purpose is to breach the Complainant's rights.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel agrees with the Complainant that the disputed domain name is confusingly similar to the Complainant's trademark ALSTOM. This trademark is included in its entirety in the disputed domain name. The addition of the geographical term "Zurich" does not prevent a finding of confusing similarity, as the Complainant's trademark remains clearly recognizable within the disputed domain name. Under section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), "[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element". Previous panels have also recognized that the incorporation of a trademark in its entirety or in its dominant feature is sufficient to establish that a domain name is identical or confusingly similar to the complainant's mark.

In light of the above, the Panel finds that the first condition under the Policy is met.

B. Rights or Legitimate Interests

While the overall burden of proof rests with the complainant, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge 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 shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the instant case, the Panel notes that the Complainant has no relation with the Respondent and that the Complainant did not authorize the Respondent to incorporate its ALSTOM trademark in the disputed domain name. The Respondent does not appear to own trademark rights over the term “alstom” or “Alstom Zurich”, nor to be commonly known by the disputed domain name.

The Panel finds that through the disputed domain name, which consists of the Complainant’s trademark ALSTOM followed by the geographical term “Zurich”, the Respondent is impersonating the Complainant, or at least suggesting sponsorship or endorsement by the Complainant. In particular, given the presence of the Complainant in Switzerland, the addition of the geographical term “Zurich” is likely to mislead Internet users looking for the Complainant in Switzerland and attract them to the Respondent’s website. Such a composition of the disputed domain name cannot constitute fair use (see section 2.5.1. of the [WIPO Overview 3.0](#)).

The disputed domain name leads to a webpage featuring the message “coming soon our website is under construction” and inviting the visitor to follow future developments, while a countdown digital clock displays the timing: 2 days, 17 hours, 53 minutes and 48 seconds.

Noting the general powers of a panel, articulated *inter alia* in paragraphs 10 and 12 of the UDRP Rules, the Panel has conducted some limited searches to investigate the use of the disputed domain name (see section 4.8 of the [WIPO Overview 3.0](#)). In particular, the Panel has found that the digital clock on the Respondent’s webpage still indicates a timing of around 2 days. Moreover, if one clicks on the “Follow us for update now!” wording, a pop up window opens inviting the visitor to subscribe for further news by entering a name and email address. The Respondent’s webpage also contains a copyright notice as follows: “@2023 alstomzurich.com”. Such use of the disputed domain name does not amount to a *bona fide* offering of goods or services as it impersonates the Complainant or suggests sponsorship or endorsement by the Complainant. Moreover, the Respondent is unduly soliciting the disclosure of personal information through its webpage (for further discussion on this point, see under Section C. below).

In light of the above, the Panel concludes that the Complainant has successfully established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production now shifts to the Respondent to demonstrate that it owns rights or legitimate interests in the disputed domain name. The Respondent has chosen not to file a Response and therefore has waived its right to contest the Complainant’s allegations.

Accordingly, the Panel is satisfied that the second condition under the Policy is met.

C. Registered and Used in Bad Faith

The Panel agrees with the Complainant that the Respondent was aware of the Complainant’s trademark when it registered the disputed domain name. The Complainant’s trademark is distinctive in its field of business. Moreover, previous panels have found that the ALSTOM trademark enjoys reputation (see for instance, *ALSTOM v. Holland Broadbridge, morgan sarah*, WIPO Case No. [DCO2022-0084](#); *ALSTOM v. Name Redacted*, WIPO Case No. [D2023-1123](#); *ALSTOM v. julian fernando fonseca*, WIPO Case No. [D2021-3611](#)). Hence, the Panel is inclined to believe that the ALSTOM trademark is renowned in its field, especially in India, where the Respondent is located and where the Complainant has a strong and longstanding presence. The addition of the geographical term “Zurich” to the disputed domain name is another indication of the Respondent’s knowledge of the Complainant and its trademark and business, considering that Switzerland is another important territory for the Complainant’s activity. The registration of a domain name with full knowledge of a third party’s trademark and without rights or legitimate interests in the domain name amount to registration in bad faith.

As far as use in bad faith is concerned, the Panel notes that the Respondent is using the disputed domain name to lead to a “coming soon webpage” displaying a countdown digital clock, that, even if it turns, always indicates that two days remain until the website launch. The webpage also displays a copyright notice including the Complainant’s trademark and invites the visitors to subscribe for news by inserting their name

and email address. Therefore, the Panel finds that the Respondent is using the disputed domain name to intentionally attempt to attract Internet users to its webpage, by creating a likelihood of confusion with the ALSTOM mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's webpage. Although the final purpose of the use of the disputed domain name is unknown to the Panel, the fact that the Respondent is soliciting users to insert their names and email addresses in order to become aware of an alleged involvement of the website is a clear indication of bad faith. Indeed, the Respondent is illegitimately soliciting the disclosure of personal information, taking advantage of the renown of the ALSTOM trademark. In addition, the fact that the digital clock indicates that there are only two days until some important event, puts pressure on users to reveal their personal information soon. Whatever the Respondent's intention is once the personal data are obtained it is likely illegitimate. Otherwise, the Respondent would not have needed to extract confidential information from Internet users. In addition, the Respondent, more likely than not, has used false contact information when registering the disputed domain name, as explained under Section 5. A above, which further supports a finding of bad faith.

In light of the above, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Thus, also the third and last condition under the Policy is met.

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, <alstomzurich.com>, be transferred to the Complainant.

/Angelica Lodigiani/

Angelica Lodigiani

Sole Panelist

Date: October 4, 2023