

## **ADMINISTRATIVE PANEL DECISION**

Alstom v. Steve Schmidt

Case No. D2023-4268

### **1. The Parties**

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

The Respondent is Steve Schmidt, United States of America (“United States”).

### **2. The Domain Names and Registrar**

The disputed domain names <alstomgroup.com> (the “Domain Name 1”) and <alstoomgroup.com> (the “Domain Name 2”) (collectively referred to as the “Domain Names”) are registered with Wild West Domains, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2023. On October 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On October 16, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 17, 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 October 18, 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 October 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 13, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 14, 2023.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on November 16, 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 operating in the fields of power generation, power transmission and rail infrastructure. It was founded in the 1928. Currently, the Complainant employs around 74,000 professionals in more than 70 countries, including the United States.

The Complainant is the owner of numerous ALSTOM trademark registrations, including:

- the United States Trademark Registration for ALSTOM (word), No. 4570546 registered on July 22, 2014;
- the International Trademark Registration for ALSTOM (figurative), No. 706292 registered on August 28, 1998; and
- the European Union Trade Mark Registration for ALSTOM (word), No. 000948729 registered on August 8, 2001.

The Complainant is also the owner of the numerous domain names incorporating its ALSTOM trademark, including <alstom.com>.

The Domain Names were registered on September 11, 2023.

On September 20, 2023, the Complainant sent the cease-and-desist letter to the Respondent. However, the Complainant has not received any response.

As of the date of this decision, as well as at the time of submitting the Complaint, the Domain Names have not resolved to active websites.

#### **5. Parties' Contentions**

##### **A. Complainant**

According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Names are confusingly similar to the ALSTOM trademark in which the Complainant has rights.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Names.

Third, the Complainant contends that the Domain Names were registered and are being used in bad faith.

##### **B. Respondent**

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

## 6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (i) the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in the Domain Names; and
- (iii) the Domain Names have been registered and are being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

### A. Identical or Confusingly Similar

Under the first requirement, the Complainant must establish that the Domain Names are identical or confusingly similar to the trademark in which the Complainant has rights.

The Complainant holds valid ALSTOM trademarks registrations. The Domain Name 1 incorporates this trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to that trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

Next, the Domain Name 2 consists of a common, obvious, or intentional misspelling of the ALSTOM trademark. The letter “o” is added between letters “o” and “m”. The Domain Name 2 contains, thus, sufficiently recognizable aspects of the ALSTOM trademark. UDRP panels have consistently found that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. See section 1.9, [WIPO Overview 3.0](#).

The addition of the term “ggroup” in the Domain Name 1 and the term “group” in the Domain Name 2 does not prevent a finding of confusing similarity between the Domain Names and the Complainant’s ALSTOM trademark. As numerous UDRP panels have held, where 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. See section 1.8, [WIPO Overview 3.0](#).

The Top-Level domain (“TLD”) “.com” in the Domain Names is viewed as a standard registration requirement and as such are disregarded under the first element confusing similarity test. See section 1.11.1, [WIPO Overview 3.0](#).

Given the above, the Panel finds that the Domain Names are confusingly similar to the ALSTOM trademark in which the Complainant has rights. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

Under the second requirement, the Complainant must prove that the Respondent has no rights or legitimate interests in the Domain Names.

The respondent may establish a right or legitimate interest in the domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that it has used or made preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or
- (ii) that it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (iii) that it is making a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence on record that the Complainant's ALSTOM trademark registrations predate the Respondent's registration of the Domain Names. There is no evidence in the case record that the Complainant has licensed or otherwise permitted the Respondent to use the ALSTOM trademark or to register the Domain Names incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Names.

Moreover, it results from the evidence on record that the Respondent does not make use of the Domain Names in connection with a *bona fide* offering of goods or services, nor does it make a legitimate noncommercial or fair use of the Domain Names. On the contrary, at the time of submitting the Complaint and as of the date of this Decision, the Domain Names have resolved to inactive websites. In fact, it does not result from the case evidence that the Domain Names have been used in any active way to date.

Given the above, the Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

Under the third element, the Complainant must prove that the Domain Names were registered and are being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See section 3.1, [WIPO Overview 3.0](#).

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use includes without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other online location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the ALSTOM trademark predate the registration of the Domain Names. The Panel finds that the Respondent was or should have been aware of the Complainant's trademark at the time of registration, as it has been proven to the Panel's satisfaction that the Complainant's ALSTOM trademark is well known and unique to the Complainant. Thus, the Respondent could not possibly ignore the reputation of products under this trademark. In sum, the Respondent registered the Domain Names with the expectation of taking advantage of the reputation of the Complainant's ALSTOM trademark.

Moreover, as of the date of this Decision, as well as at the time of submitting the Complaint, the Domain Names have not resolved to active websites. Considering the overall circumstances of this case, the Panel finds that the Respondent's passive holding of the Domain Names does not prevent a finding of bad faith. As numerous UDRP panels have held, passive holding, under the totality of circumstances of the case, would not prevent a finding of bad faith under the Policy. See section 3.3 of the [WIPO Overview 3.0](#). Here, given the well-known nature of the Complainant's trademark, the Respondent's failure to participate in the proceeding, and the implausible good faith use to which the Domain Names may be intrinsically put, the Panel agrees with the above.

Furthermore, the Respondent's failure to respond to the Complainant's cease-and-desist letter is also further evidence of bad faith.

Finally, the Respondent's use of privacy services that concealed registrant information constitutes additional evidence of bad faith.

For the reasons discussed above, the Panel finds that the Complainants have proved the requirements under paragraph 4(a)(iii) 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 Domain Names <alstomgroup.com> and <alstoomgroup.com> be transferred to the Complainant.

*/Piotr Nowaczyk/*

**Piotr Nowaczyk**

Sole Panelist

Date: November 24, 2023