

## **ADMINISTRATIVE PANEL DECISION**

Wartsila Technology Oy Ab v. Michel Bracewell, Deux Design  
Case No. D2022-0378

### **1. The Parties**

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

The Respondent is Michel Bracewell, Deux Design, United States of America (“United States”).

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 3, 2022. On February 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 4, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 February 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2022.

The Center appointed Andrew F. Christie as the sole panelist in this matter on March 8, 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 Finnish corporation that operates in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. It was established in, and has been operating continually since, 1834. As of 2019, the Complainant had net sales of EUR 5.2 billion, approximately 19,000 employees, and operations in over 200 locations across more than 80 countries. The Complainant operates its services internationally, with power plants in locations including, but not limited to, Hungary, Texas, Indonesia, Kenya, the United Kingdom, and the Caribbean.

The Complainant is the owner of several trademark registrations across a number of jurisdictions, including International Trademark Registration No. 1005789 (registered on May 22, 2009), and European Union Trademark Registration No. 008304149 (registered on November 25, 2009), both for the word trademark WÄRTSILÄ.

The Complainant operates its main website at “www.wartsila.com”, which it uses to advertise its products and services, and holds a portfolio of over 400 active domain name registrations.

The disputed domain name was registered on August 29, 2021. The Complainant has provided screenshots, taken on February 1 and 2, 2022, showing that the disputed domain name resolved to a website that appeared to advertise the services of a third-party organization, “Jetrans”, and which prominently displayed the words “Since 1998 Best Transportation & Logistic Service”. This website appears to be a non-functioning template website, since it lacks substantive text and has a significant portion comprised of Latin template text. At the time of this decision, the disputed domain name resolves to a website that appears to be the same as the website shown in the screenshots provided by the Complainant.

The Complainant sent a cease and desist letter to the Respondent on October 1, 2021, and a final reminder on October 8, 2021, to which it did not receive a response.

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

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

The Complainant made the following contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The disputed domain name incorporates the Complainant's WÄRTSILÄ trademark in its entirety with the addition of the geographical term “Caribbean”. The addition of other terms (whether descriptive, geographical, meaningless or otherwise) does not prevent a finding of confusing similarity under the first element. Rather than distinguishing the disputed domain name, the conjunction of the geographic indication with the Complainant's trademark is likely to create further confusion in the minds of Internet users, particularly as the Complainant also markets their services in the Caribbean. The generic Top-Level Domain (“gTLD”) “.com” should be disregarded as it is a standard registration requirement.

The Complainant made the following contentions to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. To the best of the Complainant's knowledge, the Respondent has not registered any trademarks for the term “Wartsila”, and there is no evidence that the Respondent holds any unregistered right to the term “Wartsila”. The Respondent has not received any license from the Complainant to use a domain name which features the WÄRTSILÄ trademark, and all active trademarks for the term WÄRTSILÄ are held by the Complainant. The disputed domain name is used by the Respondent to host a website unrelated to the Complainant, and which appears to advertise the services of a third-party organization “Jetrans”. Once a user navigates through the website resolving from the disputed domain name, the URL changes, which confirms that there are unlikely to be genuine offerings hosted on the website, and that more likely the intention of the website is to scam potential visitors. The Respondent is not known as, and has never been known as, “Wartsila”, and the WÄRTSILÄ trademark is distinctive and not

used in commerce other than by the Complainant. There is no plausible reason for the registration of the disputed domain name other than to take advantage of the goodwill and valuable reputation attached to the WÄRTSILÄ brand, as the Respondent has no connection or affiliation with the Complainant, and has not received any license or consent to use the Complainant's trademark in any way. The Respondent is likely generating commercial gain through misleadingly diverting Internet users of the disputed domain name, either directly or indirectly, through the services offered at the website resolving from the disputed domain name.

The Complainant made the following contentions to establish that the disputed domain name was registered and is being used in bad faith. The Complainant's earliest WÄRTSILÄ trademark registration predates the creation date of the disputed domain name by at least 23 years, and the Complainant has developed substantial goodwill and recognition over its 180-year history and through its operations in over 200 locations across more than 80 countries. It is inconceivable that the Respondent has chosen to register the disputed domain name for any reason other than to target the Complainant's brand. The Respondent failed to provide any response to the Complainant's cease and desist letter. The Respondent creates a pretense of association with the Complainant's business through the use of a domain name that is so closely similar to the Complainant's trademark. The Respondent's primary purpose is to disrupt the Complainant's business by creating "initial interest confusion" in unsuspecting Internet users who use a domain name in an effort to find a website related to the trademark holder, only to be diverted. The Respondent's use of the disputed domain name to redirect Internet users seeking the Complainant's services to an unrelated website is an apparent attempt to attract commercial profits by creating a likelihood of confusion with the Complainant's trademark. The disputed domain name currently appears to be set up with mail exchanger (MX) records, which shows that the disputed domain name may be actively used for email purposes, and likely to be used to facilitate potentially fraudulent activity such as phishing, impersonating or passing off as the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

Once the gTLD ".com" is ignored (which is appropriate in this case), the disputed domain name consists of the Complainant's WÄRTSILÄ trademark without the umlauts, followed by the word "caribbean". The Complainant's trademark is clearly recognizable within the disputed domain name. The absence of the umlauts and the addition of the geographic term "caribbean" does not avoid the confusing similarity of the disputed domain name with the Complainant's trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

### **B. Rights or Legitimate Interests**

The Respondent is not a licensee of the Complainant, is not otherwise affiliated with the Complainant, and has not been authorized by the Complainant to use its WÄRTSILÄ trademark. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name, or that it has, for any other reason, rights or legitimate interests in the disputed domain name. The evidence provided by the Complainant shows that the disputed domain name has been used to resolve to a website that appears to advertise transportation and logistics services of an entity that is unrelated to the Complainant. Given the confusing similarity of the disputed domain name to the Complainant's trademark, the absence of any relationship between the Respondent and the Complainant, and the risk of implied false affiliation with the Complainant, the Respondent's use of the disputed domain name is neither a *bona fide* use nor a legitimate noncommercial or fair use.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

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

The disputed domain name was registered many years after the Complainant first registered its WÄRTSILÄ word trademark. It is inconceivable that the Respondent registered the disputed domain name ignorant of the existence of the Complainant's trademark, given that the disputed domain name consists of the Complainant's trademark (without the umlauts) with the addition of the geographic term "caribbean", a region in which the Complainant operates.

Given the Respondent's lack of rights or legitimate interests in the disputed domain name and the confusing similarity of the disputed domain name to the Complainant's trademark, any use of the disputed domain name by the Respondent almost certainly implies an affiliation with the Complainant that does not exist, and so would be a use in bad faith.

Furthermore, the evidence on the record provided by the Complainant indicates that the Respondent has used the disputed domain name in an attempt to attract, almost certainly for commercial gain, Internet users to a website by creating confusion in the minds of the public as to an association between the website and the Complainant.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

### **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, <wartsilacaribbean.com>, be transferred to the Complainant.

*/Andrew F. Christie/*

**Andrew F. Christie**

Sole Panelist

Date: March 22, 2022