

ADMINISTRATIVE PANEL DECISION

Wärtsilä Technology Oy Ab v. Contact Privacy Inc. Customer 7151571251 /
matthew morgan
Case No. D2022-2363

1. The Parties

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

The Respondent is Contact Privacy Inc. Customer 7151571251, Canada / matthew morgan, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <wartrsila.com> (the “Domain Name”) is registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 29, 2022. On June 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on July 7, 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 the same date.

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 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2022.

On July 15 and 19, 2022, a third party sent email communications to the Center, which contained in the attachment a copy of the Center’s written communication in the present proceeding, and requested a copy of

the Complaint, claiming to seek to “obtain the documents” on behalf of the Respondent and to further “refer the matter out.” The Respondent did not submit any response. On August 17, 2022, the Center notified the Parties that it would proceed to panel appointment.

The Center appointed Mathias Lilleengen as the sole panelist in this matter on August 19, 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 to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a Finnish corporation which operates in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. As of 2021, the Complainant had net sales of EUR 4.8 billion with approximately 17,000 employees. The Complainant has an international presence with operations in over 200 locations across 68 countries.

The Complainant, its affiliates, subsidiaries and associated companies own trademarks for the WÄRTSILÄ (or WARTSILA) mark across a number of jurisdictions, such as International trademark registration number 1005789 registered on May 22, 2009, United States registration number 2078313, registered on July 15, 1997, and European Union trademark registration number 000838466 registered on February 21, 2000.

The Complainant operates online from its main website “wartsila.com” and holds a portfolio of over 400 active domain name registrations. The Complainant utilizes its trademark as part of its brand logo and has social media presence.

The Domain Name was registered on February 24, 2022. At the time of drafting the decision, the Domain Name has resolved to an error website.

5. Parties’ Contentions

A. Complainant

The Complainant provides evidence of trademark registrations and argues that its trademark has obtained goodwill and recognition. The Complainant submits that the Domain Name matches the Complainant’s trademark except for an additional letter “r”. The added letter is not sufficient to distinguish the Domain Name from the Complainant’s trademark.

The Complainant asserts that it has never authorized or licensed the Respondent to use its trademark. There is no evidence indicating that the Respondent has any trademark rights to the term WARTSILA or has been commonly known by the Domain Name. Moreover, the Respondent is not offering any goods or services. The Domain Name does not resolve to a webpage. The non-use of the Domain Name cannot be considered a *bona fide* offering of goods or services.

The Complainant submits that the Respondent must have been aware of the Complainant prior to registering the Domain Name. The Complainant’s trademark predates the registration of the Domain Name by 25 years. The Domain Name constitutes an example of typosquatting. The Complainant submits there are numerous indications that the Domain Name has previously been used for fraudulent emails. Even if the Domain Name currently does not resolve to a functional webpage, such passive use does not preclude a finding of bad faith use. The Complainant’s trademark has a strong reputation, the Respondent has provided no evidence of any actual or contemplated good faith use and taken active steps to conceal its identity. It is not possible to conceive any plausible good faith use of the Domain Name by the Respondent.

B. Respondent

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

6. Discussion and Findings

In view of the absence of a formal Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is 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 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 Complainant has established that it has rights in the trademark WARTSILA. The test for confusing similarity involves a comparison between the trademark and the Domain Name. The Domain Name incorporates the Complainant's trademark in its entirety with the additional letter "r" and the change of the letter "ä" to the letter "a". The addition and change of letters does not prevent a finding of confusing similarity between the Domain Name and the trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 1.9.

For the purpose of assessing under paragraph 4(a)(i) of the Policy, the Panel may ignore the generic Top-Level Domain ("gTLD") which in this case is ".com". See [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds that the Domain Name is confusingly similar to a trademark in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy

B. Rights or Legitimate Interests

The Complainant has made unrebutted assertions that it has not granted any authorization to the Respondent to register a domain name containing the Complainant's trademark or otherwise make use of the Complainant's mark. There is no evidence that the Respondent has registered the Domain Name as a trademark or acquired unregistered rights. There is no evidence that the Respondent has been commonly known by the Domain Name.

The Respondent has not offered any explanation as to the registration of the Domain Name, which incorporates the Complainant's trademark in its entirety, and has not provided any evidence of good faith use of the Domain Name. The current non-use of the Domain Name cannot be considered a *bona fide* offering of goods or services.

Accordingly, the Panel finds that the Complainant has established an unrebutted *prima facie* case that the Respondent has no rights or legitimate interests in respect of the Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, Complainant must show that Respondent registered and is using the Domain Name in bad faith. A non-exhaustive list of factors constituting bad faith registration and use is set out in paragraph 4(b) of the Policy.

The Panel finds it probable that the Respondent was aware of the Complainant when the Respondent registered the Domain Name. The Panel agrees with the Complainant that the evidence points to typosquatting. The Respondent's intent in registering the Domain Name was most likely to profit in some fashion or otherwise exploit the reputation of the Complainant's trademark, by creating a likelihood of confusion with the Complainant's trademark. See [WIPO Overview 3.0](#), section 3.1 and 3.1.4.

The Complainant has submitted MX records indicating that the Domain Name has been used in order to set up fraudulent email accounts. This indicates bad faith. It is also settled in UDRP practice of typosquatting constitutes obvious evidence of bad faith registration of a domain name. See *Admiral Group Plc and EUI Limited v. Cimpres Schweiz, Cimpres Schweiz GmbH*, WIPO Case No. [DCO2017-0043](#). The Complainant has shown that its trademark has a strong reputation. The Panel finds that the composition of the Domain Name along its use to set up what appears to be fraudulent email accounts lead to a finding that the Respondent registered and used the Domain Name in bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

The Respondent has not provided any evidence of actual or contemplated good-faith use of the Domain Name and has not responded to the Complaint. The current non-use of the Domain Name does not preclude a finding of bad faith use of the Domain Name. See [WIPO Overview 3.0](#), section 3.3. The Complainant's trademark had a strong reputation. The Respondent has provided no evidence of any actual or contemplated good faith use and taken steps to conceal its identity.

The Panel cannot see any plausible actual or contemplated active good faith use of the Domain Name (a typo of the relevant mark) by the Respondent.

For the reasons set out above, the Panel concludes that the Domain Name was registered and is being used in bad faith, within the meaning of 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 Name <wartrsila.com> be transferred to the Complainant.

/Mathias Lilleengen/

Mathias Lilleengen

Sole Panelist

Date: September 1, 2022