

## **ADMINISTRATIVE PANEL DECISION**

DISH Network L.L.C. v. Alon Garay Garay  
Case No. D2022-3437

### **1. The Parties**

The Complainant is DISH Network L.L.C., United States of America (“United States”), represented by Adsero IP, United States.

The Respondent is Alon Garay Garay, United States.

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

The disputed domain name <dishwirelesssholding.com> is registered with Realtime Register B.V. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 15, 2022. On September 16, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 19, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on September 19, 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 September 20, 2022. References in this Decision to the Complaint are to the Amended Complaint.

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 September 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 24, 2022.

The Center appointed Richard G. Lyon as the sole panelist in this matter on November 2, 2022. The Panel finds that it was properly constituted and has jurisdiction to decide this administrative proceeding. The Panel has submitted his 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 major provider of satellite, wireless, and pay-per-view communications services to business and individuals in the United States. It markets and provides these services under the names DISH and DISH WIRELESS. The Complainant owns numerous trademarks for DISH, duly registered with the United States Patent & Trademark Office (“USPTO”). The earliest of these cited in the Complaint is for DISH and design, registered on July 1, 1997, with registration number 2,075,565. The Complainant has applied to the USPTO for registration of DISH WIRELESS, which application is currently pending. Annexed to the Complaint are numerous examples of public advertisements for the Complainant’s services utilizing both DISH and DISH WIRELESS.

The Respondent registered the disputed domain name on August 24, 2022. The Panel was unable to access a website at this web address.

In an email dated August 29, 2022, sent from [...]@dishwireless.com, a person self-identified as “Senior Vice President and Chief Accounting Officer, DISH Wireless Holding LLC,” to one of the Complainant’s vendors, seeking payment of an invoice. The vendor relayed the email to the Complainant, which asserts that the email contains false information about a change in the Complainant’s ACH data and is part of a phishing scheme designed to trick the vendor into paying the Respondent.

#### **5. Parties’ Contentions**

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

The Panel summarizes the Complainant’s contentions as follows:

1. The Complainant holds rights in DISH and DISH WIRELESS by virtue of its USPTO-registered DISH marks and continuous use of both terms as service identifiers since the 1990s. The disputed domain name is confusingly similar to both marks, differing from DISH WIRELESS only by the additions of a third “s” and the word “holding.” The latter addition allows the Respondent to mimic the Complainant’s corporate name.
2. The Complainant has not licensed the Respondent to use its marks and the Respondent has not been commonly known by the word DISH. According to section 2.13.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”),<sup>1</sup> fraudulent activity such as phishing is not *bona fide* use of or a legitimate interest in the disputed domain name.
3. Typosquatting – close imitation of the Complainant’s marks with a minor typographical error such as the third “s” in the disputed domain name – is classic bad faith under the Policy, as is use for fraudulent or illegal purposes. Both indicate the Respondent’s use of the disputed domain name to take advantage of the renown of and goodwill attached to the Complainant’s marks.

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

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

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<sup>1</sup> “Panels have categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent.”

## 6. Discussion and Findings

Paragraph 4(a) of the Policy requires the Complainant to prove the following three elements to be entitled to the relief sought: (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; (ii) that the Respondent has no rights or legitimate interests in respect to the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith. The Complainant bears the burden of proof under each element.

The Respondent's default does not automatically result in an order of transfer or constitute an admission of any factual matter pleaded in the Complaint. [WIPO Overview 3.0](#), section 4.3; *Qind LTD c/o Victor Naate Nartey Jnr. v. Lawrence Johnson*, WIPO Case No. [D2018-2909](#).

### A. Identical or Confusingly Similar

The Complainant has rights in both DISH and DISH WIRELESS, the former by reason of its USPTO-registered marks and the latter by reason of continuous and prominent use in commerce. The Complainant's evidence establishes such rights in DISH WIRELESS notwithstanding that its trademark application remains pending.<sup>2</sup> The disputed domain name employs the dominant feature of both marks, DISH, and differs from DISH WIRELESS only by the misspelling; the addition of the word "holding" that adds to imitation of the Complainant; and the top-level domain ".com". Confusing similarity is obvious. The Complainant has established this Policy element.

### B. Rights or Legitimate Interests

The Complainant's evidence and contentions on this Policy element are also convincing. Nothing in the record demonstrates or even suggests that the Respondent has a right or legitimate interest in DISH, DISH WIRELESS, or the disputed domain name, or that the Respondent has ever been known by the word DISH. [WIPO Overview 3.0](#), section 2.1. The Complainant has established this Policy element.

### C. Registered and Used in Bad Faith

Typosquatting by itself establishes the two principal factual matters ordinarily required to demonstrate bad faith in registration and use; knowledge of the Complainant's marks and an intent (often called targeting) to take advantage of those marks. [WIPO Overview 3.0](#), section 1.9; *Viacom International Inc. v. Mary Rachel Kostreva*, WIPO Case No. [D2016-0200](#) ("when [typosquatting is] used at a domain whose name's dominant feature is another's mark it reveals both necessary elements of bad faith under the Policy – knowledge of the mark and intentionally choosing it for a free ride on the mark's value."). The phishing email quoted above confirms both knowledge and targeting; for example, its author uses the Complainant's legal name without the extra "s" in "wireless".

Fraudulent conduct is bad faith use incarnate, and Policy precedent is now clear that bad faith use need not involve conduct at a website that incorporates a domain name. *E.g.*, *Gannett Co., Inc. v. Privacy Service Provided by Withheld for Privacy ehf /Sameul Sanders, Sam LCC*, WIPO Case No. [D2022-1233](#) (phishing; spear fishing); and *Valero Energy Corporation and Valero Marketing and Supply Company v. Registration Private, Domains By Proxy LLC / Valero Energy Corporation*, WIPO Case No. [D2017-0087](#) (fraudulent fee scheme; phishing).<sup>3</sup> As the Complainant points out, use of the disputed domain name to phish five days after the Respondent's registration of it leaves room for no inference other than that the Respondent registered it for that purpose. The Complainant has proven bad faith.

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<sup>2</sup> A pending trademark application does not ordinarily by itself confer rights under paragraph 4(a)(i) of the Policy. *E.g.*, *Bouncing Bear Botanicals, Inc. v. International Domain Name and Protection, LLC.*, WIPO Case No. [D2011-1243](#), but here the Complainant's evidence suffices to show widespread use of DISH WIRELESS as a service identifier.

<sup>3</sup> Policy paragraph 4(a)(iii)'s examples of bad faith are expressly nonexclusive.

## 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 <dishwirelesssholding.com> be transferred to the Complainant.

*/Richard G. Lyon/*

**Richard G. Lyon**

Sole Panelist

Date: November 14, 2022