

ADMINISTRATIVE PANEL DECISION

Wärtsilä Technology Oy Ab v. matthew morgan, Matthew morgan; Scott Smith, wartsila; Patricia Strom, Abderhalden; Platinum Realty - Austin, Dmytro and Platinum Realty - Austin, Abderhalden, Kevin
Case No. D2022-3478

1. The Parties

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

The Respondents are matthew morgan, Matthew morgan, United States of America (“United States”); Scott Smith, wartsila, United States; Patricia Strom, Abderhalden, United States; Platinum Realty - Austin, Dmytro, United States, and Platinum Realty - Austin, Abderhalden, Kevin, United States.

2. The Domain Names and Registrar

The disputed domain names <wrtsila.com>, <wertsila.com>, <wairtsila.com>, <wattsila.com> and <wartsilar.com> are registered with Google LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 20, 2022. On September 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 20, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (Contact Privacy Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 21, 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 26, 2022 and requested the consolidation of the Respondents.

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 Respondents of the Complaint, and the proceedings commenced on September 29, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 19, 2022. The Respondents did not submit any response. On October 4 and 10, 2022, two emails from a third party (using different email addresses than the ones provided by the Registrar) were submitted to the Center alleging that it had no connection to the disputed domain names or to their registrants. The Center notified the Respondents' default on October 20, 2022.

The Center appointed Assen Alexiev as the sole panelist in this matter on November 2, 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 was established in 1834. It is a Finnish corporation operating in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. The Complainant has a strong international presence with operations in over 200 locations across 80 countries. In 2021, the Complainant had about 17,000 employees and made net sales of EUR 4.8 billion.

The Complainant is the owner of the following trademark registrations for the signs "WÄRTSILÄ" and "WARTSILA" (for ease of reference, the "WARTSILA trademark"):

- the United States trademark WÄRTSILÄ with registration No. 2078313, registered on July 15, 1997 for goods in International Class 7;
- the European Union trademark WÄRTSILÄ with registration No. 000838466, registered on February 21, 2000 for goods and services in International Classes 7, 12 and 37;
- International trademark WÄRTSILÄ with registration No. 1005789, registered on May 22, 2009 for goods and services in International Classes 7, 9, 11, 12, 35, 37, 41 and 42;
- the European Union trademark WÄRTSILÄ with registration No. 008304149, registered on November 25, 2009 for goods and services in International Classes 7, 9, 11, 12, 35, 37, 41 and 42; and
- the European Union trademark WARTSILA with registration No. 011765294, registered on September 18, 2013 for goods and services in International Classes 7, 9, 11, 12, 35, 37, 41 and 42.

The Complainant is the owner of the domain name <wartsila.com>, registered on January 5, 1996, which it uses for its official website. The Complainant also promotes its services on Facebook, Twitter, Instagram, LinkedIn and YouTube.

The disputed domain names were registered as follows:

- <wrtsila.com> on March 7, 2022;
- <wertsila.com> on June 12, 2022;
- <wairtsila.com> on July 22, 2022;
- <wattsila.com> on August 15, 2022; and
- <wartsilar.com> on August 18, 2022.

All the disputed domain names resolve to inactive websites.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain names are confusingly similar to the WARTSILA

trademark, because each of them matches this trademark except for the addition, subtraction or substitution of one letter. The disputed domain name <wairtsila.com> has an added letter “i”, the disputed domain name <wrtsila.com> has the letter “a” removed, the disputed domain name <wertsila.com> has the letter “a” replaced by the letter “e”, the disputed domain name <wartsilar.com> has the letter “r” added, and the disputed domain name <wattsila.com> has the letter “r” replaced by the letter “t”. According to the Complainant, the disputed domain names are therefore examples of typosquatting.

The Complainant submits that the Respondents have no rights or legitimate interests in respect of the disputed domain names, because they do not have any rights to the mark WARTSILA and have not received any license from the Complainant to use domain names featuring the WARTSILA trademark. The Complainant adds that the Respondents are not commonly known by the mark WARTSILA and have used false contact details for the registration of the disputed domain names. The Complainant also points out that the Respondents are not offering any goods or services through the disputed domain names, which are being passively held and do not resolve to active webpages. According to the Complainant, the made-up term WARTSILA is not a phrase that a trader would choose unless seeking to create an impression of association with the Complainant, and the Respondents have deliberately registered the disputed domain names for typosquatting upon the distinctive WARTSILA trademark. The Complainant adds that there is evidence that the disputed domain names <wertsila.com> and <wrtsila.com> have been used to carry out phishing activities.

The Complainant contends that the disputed domain names were registered and are being used in bad faith. It points out that Internet search results for the term “Wartsila” list the Complainant’s brand and services as the first result. The Complainant asserts that the Respondents have engaged in typosquatting, targeting the Complainant in the hope of catching Internet users that mistype the Complainant’s web address “www.wartsila.com”.

The Complainant submits that it sent cease and desist letters to the Respondents in July and August 2022, but the Respondents did not respond. Instead, they registered the disputed domain names <wairtsila.com>, <wattsila.com>, and <wartsilar.com> following the first cease and desist letter of July 7, 2022.

The Complainant further asserts that the Respondents have used the disputed domain names in bad faith, as there are indications that the disputed domain names <wertsila.com> and <wrtsila.com> have been used for fraudulent email communications, such as to solicit money transfers from customers of the Complainant, or for an email address that matches the name of an employee of the Complainant.

The Complainant also submits that the Respondents were involved in a previous UDRP case with the Complainant, involving the domain name <wartrtsila.com>, which was also used for phishing activity (*Wärtsilä Technology Oy Ab v. Contact Privacy Inc. Customer 7151571251 / matthew morgan*, WIPO Case No. [D2022-2363](#)). According to the Complainant, this shows the Respondents’ knowledge of the Complainant and their intention to use typosquatting variations of the Complainant’s WARTSILA trademark to carry out fraudulent activities. The Complainant notes that the registration of six domain names incorporating the Complainant’s WARTSILA trademark (including the previous UDRP dispute cited above), supports a finding of abusive pattern of conduct under bad faith.

According to the Complainant, the fact that the disputed domain names do not currently resolve to functional webpages does not preclude a finding of bad faith use.

The Complainant submits that the Respondents have attempted to conceal their identities through the submission of false contact details for the disputed domain names to the Registrar. According to the Complainant, there is no plausible good faith use for which the disputed domain names could have been registered, them being confusingly similar to the renowned WARTSILA trademark.

B. Respondents

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

In informal communications to the Center two persons identifying themselves as Matt Morgan, on October 4 and 2022, and Whitney Bell on October 5, 2022, claimed that they had no connection to the disputed domain names and to their registrants. Their messages were sent from email addresses different from the email addresses included in the contact details of the registrants of the disputed domain names indicated by the Registrar. These persons did not explain how they have received communications about the present proceeding and did not dispute the Complainant's contentions or evidence or assert having rights or legitimate interests in the disputed domain names.

6. Discussion and Findings

6.1. Procedural issue – Consolidation of Respondents

The Complainant requests that all of the disputed domain names and the named Respondents be consolidated in a single UDRP proceeding. In support of its request, the Complainant submits that all of the disputed domain names are under the control of the same individual or entity. The Complainant points out that all disputed domain names are registered via the same Registrar and are using the same nameservers, that they share the same naming pattern of substitution, addition or subtraction of one letter of the WARTSILA trademark to create typosquatted versions of it, and were registered within a short period of time. The Complainant notes that the contact details of the Respondents provided to the Registrar combine unusual, inconsistent or mismatched names, addresses and contact numbers, such as wrong telephone area codes or “.fr” email addresses for registrants apparently based in the United States. The Complainant further notes that the disputed domain names <wairtsila.com>, <wattsila.com>, and <wartsilar.com> utilize the same email address and contact number, while the disputed domain names <wattsila.com> and <wartsilar.com> use the same address and a variation of the same name. Finally, the Complainant notes that the disputed domain names <wrtsila.com> and <wertsila.com> have both been used in connection with phishing activity, using the names of employees of the Complainant in email addresses activated under these disputed domain names.

The Center has discharged its duties to notify the persons listed as registrants of the disputed domain names. None of the listed registrants of the disputed domain names has submitted a formal Response or objected to the consolidation request of the Complainants.

Paragraph 10(e) of the Rules grants a panel the power to consolidate multiple domain name disputes, and paragraph 3(c) of the Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder. As discussed in section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), where a complaint is filed against multiple respondents, UDRP panels look at whether the domain names or corresponding websites are subject to common control, and whether the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario. UDRP panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in the content or layout of websites corresponding to the disputed domain names, any naming patterns in the disputed domain names, or other arguments made by the complainant.

The Panel is satisfied that the Complainants have shown good reasons why the consolidation of the Respondents and disputes related to the disputed domain names in a single proceeding is justified and appropriate in the circumstances. As noted by the Complainant, the disputed domain names share the same typosquatting naming pattern and were registered within short periods of time, are registered with the same Registrar and share the same nameservers, and the contact details of their registrants indeed appear as unusual and inconsistent. As also noted by the Complainant, the registrants of the disputed domain names share part of their contact details. These circumstances show that it is more likely than not that the disputed domain names are under common control - a situation that none of the Respondents has denied.

No Party has advanced any reasons why it may not be equitable to allow the consolidation of the disputes. It appears to the Panel that the consolidation would lead to greater procedural efficiency, and the Panel is not aware of any reasons why the consolidation would not be fair and equitable to all parties.

Therefore, the Panel decides to allow the consolidation of the disputes in relation to all of the disputed domain names in the present proceeding.

6.2. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain names:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names were registered and are being used in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondents, in compliance with the Rules, paragraph 2(a), and the Respondents were given a fair opportunity to present their cases.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain- name holder) to retain registration and use of the disputed domain name [...]”.

The Respondents however made no submissions addressing the substance of the Complainant’s contentions.

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the WARTSILA trademark. Therefore, the Panel is satisfied that the Complainant has established that it has rights in this trademark for the purposes of the Policy.

As noted by the Complainant, each of the disputed domain names incorporates the WARTSILA trademark with the addition, removal or substitution of a letter, *i.e.*, the disputed domain name <wairtsila.com> has an added letter “i”, the disputed domain name <wrtsila.com> has the letter “a” removed, the disputed domain name <wertsila.com> has the letter “a” replaced by the letter “e”, the disputed domain name <wartsilar.com> has the letter “r” added, and the disputed domain name <wattsila.com> has the letter “r” replaced by the letter “t”. In the lack of any different explanation by the Respondents, the Panel accepts that all disputed domain names represent obvious misspellings of the WARTSILA trademark.

As discussed in section 1.9 of the [WIPO Overview 3.0](#), 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.

In view of the above, the Panel finds that the disputed domain names are confusing similar to the WARTSILA trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the

often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control 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 on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondents have no rights or legitimate interests in the disputed domain names, because they have not been authorized by the Complainant to use the WARTSILA trademark or any domain name including it, and there is no relationship between the Parties. The Complainant points out that the disputed domain names point to parking webpages, and contends that they were registered only to be resold or to attract the Complainants’ consumers to the Respondents’ webpages. The Complainant adds that two of the disputed domain names have been used for phishing activities. The Complainant has thus established a *prima facie* case that the Respondents lack rights or legitimate interests in the disputed domain names.

The Respondents have not submitted Responses or disputed the contentions of the Complainant, and have not provided any plausible explanation why they registered the disputed domain names and how they intend to use them. As alleged by the Complainant and not denied by the Respondents, they have not responded to the Complainant’s cease and desist letters either, but instead proceeded to register three of the disputed domain names after receiving the first of these letters.

The disputed domain names are all confusingly similar to the WARTSILA trademark and appear as typosquatted versions of it, and are currently inactive. The Complainant has provided evidence that the disputed domain names <wertsila.com> and <wrtsila.com> have been used for phishing activities through scam emails in which their sender was pretending to be an employee of the Complainant in order to solicit money transfers from customers of the Complainant. As discussed in section 6.1 above, it appears as more likely that the disputed domain names are under common control.

This leads the Panel to the conclusion that it appears as more likely than not that the Respondents knew the Complainant’s WARTSILA trademark and, acting under common control, targeted it when registering the disputed domain names representing typosquatted versions of the Complainant’s trademark in an attempt to confuse Internet users that the disputed domain names are related to the Complainant. The Panel is not aware of any legitimate activity to which the disputed domain names may be put.

This is sufficient for the Panel to reach the conclusion that the Respondents do not have rights or legitimate interests in the disputed domain names.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.”

The disputed domain names all incorporate the WARTSILA trademark, which was first registered twenty-five years prior to their registration, and represent typosquatted versions of it. As discussed in section 6.1 above, it is more likely than not that all of them are under common control. The Panel sees no reason not to accept the Complainant's assertion that the term WARTSILA is made-up and is not a name that a trader would choose unless seeking to create an impression of association with the Complainant. The Complainant has also submitted evidence showing that the disputed domain names <wertsila.com> and <wrtsila.com> have been used for phishing activities, while the disputed domain names <wairtsila.com>, <wattsila.com>, and <warsilar.com> were registered shortly after the Complainant sent its first cease and desist letter to the Respondents. As noted by the Complainant, one of the Respondents was involved in a previous domain name dispute with the Complainant, involving the domain name <warsila.com>, which was also used for phishing activity (*Wärtsilä Technology Oy Ab v. Contact Privacy Inc. Customer 7151571251 / matthew morgan*, WIPO Case No. [D2022-2363](#)).

The above leads the Panel to the conclusion that it is more likely than not that the Respondents have registered and used the disputed domain names acting in concert in an intentional attempt to confuse Internet users that the disputed domain names and any associated email addresses are affiliated to the Complainant. The fact that two of the disputed domain names have been used for phishing activities shows that the motivation for the Respondents' actions is likely to have been to receive commercial gain through the operation of the disputed domain names.

The fact that the disputed domain names do not currently resolve to functional webpages does not preclude a finding of bad faith use. As discussed in section 3.3 of the [WIPO Overview 3.0](#), from the inception of the UDRP, panelists have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put.

The Panel finds several of these factors to be present here. The Complainants have submitted evidence about the popularity of the distinctive WARTSILA trademark, the Respondents have not submitted any Response and have provided what appears to be false contact details, and there is no evidence in the case allowing the Panel to conclude that the disputed domain names could be put to any good faith use.

Therefore, the Panel finds that the disputed domain names have been registered and 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 names, <wairtsila.com>, <warsilar.com>, <wattsila.com>, <wertsila.com>, and <wrtsila.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: November 16, 2022