

ADMINISTRATIVE PANEL DECISION

Wartsila Technology Oy Ab v. Mustafa Mag
Case No. D2023-0491

1. The Parties

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

The Respondent is Mustafa Mag, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <wartsila.cam> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 2, 2023. On February 2, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 2, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name, which differed from the named Respondent (Redacted for Privacy, Privacy Service Provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 6, 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 February 6, 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 February 9, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 3, 2023.

The Center appointed Mario Soerensen Garcia as the sole panelist in this matter on March 10, 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 Finnish corporation of smart technologies and lifecycle solutions for the marine and energy markets.

The Complainant, its affiliates, subsidiaries, and associated companies own trademark registrations for WÄRTSILÄ and WARTSILA in many jurisdictions around the world, including the following registrations:

- United States trademark No. 2078313, for WÄRTSILÄ, registered on July 15, 1997;
- European Union trademark No. 000838466, for WÄRTSILÄ, registered on February 21, 2000;
- European Union trademark No. 008304149, for WÄRTSILÄ, registered on November 25, 2009;
- European Union trademark No. 011765294, for WARTSILA, registered on September 18, 2013.
- International trademark No. 1005789, for WÄRTSILÄ, registered on May 22, 2009;

The Complainant operates the domain name <wartsila.com>.

The disputed domain name was registered on August 31, 2022, and does not currently resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant informs that it operates from its main domain name <wartsila.com>, which it uses to advertise its products and services, in addition to promoting its WÄRTSILÄ and WARTSILA marks globally. It argues that it holds a portfolio of over 400 active domain name registrations incorporating the Complainant's marks.

The Complainant refers to previous panels that have recognized the value of the trademarks WÄRTSILÄ and WARTSILA and its association with the Complainant.

The Complainant alleges that the disputed domain name encompasses the trademark WARTSILA in its entirety, and that previous Panels have recognized the value of the trademarks WÄRTSILÄ and WARTSILA and their association with the Complainant.

Moreover, the Complainant defended that the Top-Level Domain ("TLD") extension ".cam" can be disregarded as a first element, since it would be considered by Internet users as a necessary technical requirement for a domain name. According to the Complainant, instead of avoiding confusion, the addition of the ".cam" TLD will likely create further confusion for Internet users. The higher risks of confusion would stem from the similarity of the ".cam" TLD to the commonly used TLD ".com" (used in the Complainant's main website), and also because ".cam" may be associated with the Complainant's Camshaft products, as well as the geographical indicator for Cambodia, in which the Complainant has a significant presence.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and has not been licensed by the Complainant to use the trademarks WÄRTSILÄ and WARTSILA.

Additionally, the Complainant is not aware of any trademark rights by the Respondent to the marks WÄRTSILÄ and WARTSILA and, to the Complainant's knowledge, the Respondent is not commonly known by the distinctive trademarks WÄRTSILÄ and WARTSILA.

The Complainant also argues that the Respondent is not offering any goods or services from the disputed domain name, which would be held passively and would not resolve to a webpage.

The Complainant stressed that it noted the Respondent's activation of mail exchange ("MX records") for the disputed domain name and that the Respondent is likely using the disputed domain name to carry out fraudulent activity.

On September 15, 2022, the Complainant sent a Cease and Desist letter to the Respondent. The Respondent has not responded to such a letter.

Furthermore, the Complainant argues that the disputed domain name was registered in bad faith, which can be demonstrated by the presence of MX records, the reproduction of the Complainant's distinctive trademark WARTSILA associated with the ".cam" TLD, the lack of reply to a Cease and Desist letter sent by the Complainant and the efforts to conceal its true identity.

Finally, the Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

As per paragraph 4(a) of the Policy, the Complainant must prove that:

- (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 respect of 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 evidence demonstrates that the Complainant is the owner of several trademark registrations for WÄRTSILÄ and WARTSILA in many jurisdictions. The Complainant's trademarks predate the registration of the disputed domain name.

The disputed domain name incorporates the Complainant's distinctive trademark WARTSILA in its entirety.

As numerous prior UDRP panels have recognized, the incorporation of a trademark in its entirety or a dominant feature of a trademark is sufficient to establish that a domain name is identical or confusingly similar to the complainant's mark. See section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Panel finds that paragraph 4(a)(i) of the Policy has been proved by the Complainant, *i.e.*, disregarding the ".cam" Top-Level Domain ("TLD"), the disputed domain name is identical to the Complainant's trademark WARTSILA.

B. Rights or Legitimate Interests

The Respondent has not submitted a response to the Complaint.

There is no evidence that the Respondent has any authorization to use the Complainant's trademarks or to register domain names containing the Complainant's trademarks WÄRTSILÄ and WARTSILA.

There is no evidence that the Respondent is commonly known by the disputed domain name.

There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name or that before any notice of the dispute, the Respondent has made use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, the disputed domain name is held passively and does not resolve to an active website.

The construction of the disputed domain name itself is such to carry a high risk of implied affiliation that cannot constitute fair use. See section 2.5.1 of the [WIPO Overview 3.0](#). The Panel notes that the Complainant operates the almost identical domain name <wartsila.com>.

The Panel finds that the use of the disputed domain name, which incorporates the Complainant's distinctive trademark WARTSILA, does not correspond to a *bona fide* use of the disputed domain name under the Policy.

For the above reasons, the Panel finds that the Complainant has made out an unrebutted *prima facie* case and the condition of paragraph 4(a)(ii) of the Policy has been satisfied, *i.e.*, the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The trademarks WÄRTSILÄ and WARTSILA are registered by the Complainant in several jurisdictions and has been used since a long time. Also, the Complainant registered domain names consisting of the marks WÄRTSILÄ and WARTSILA.

The disputed domain name reproduces the Complainant's trademarks WÄRTSILÄ and WARTSILA in its entirety and the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant's trademarks are distinctive and have a strong worldwide and online visibility.

The Complaint demonstrates that there is no other reason for the use and registration of the disputed domain name than to take any advantage of the reputation of the Complainant's trademarks, with the intent to deceive Internet users into believing that the disputed domain name is associated with the Complainant. The Respondent obviously knew of the Complainant's mark when registering the disputed domain name.

Moreover, the Respondent has chosen not to respond to the Complainant's allegations. According to the panel's decision in *The Argento Wine Company Limited v. Argento Beijing Trading Company*, [D2009-0610](#), "the failure of the Respondent to respond to the Complaint further supports an inference of bad faith" (see also *Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. [D2002-0787](#)).

While it seems that the disputed domain name has not been actively used for a website, it has long been held in UDRP decisions that the passive holding of a domain name does not prevent a finding of bad faith. See section 3.3 of the [WIPO Overview 3.0](#). Moreover, the Panel finds that the failure of the Respondent to submit a Response and the fact that the Respondent used a privacy service to conceal its identity are further indication of bad faith.

Therefore, this Panel finds that the Respondent has intentionally attempted to cause confusion with the Complainant's trademarks by misleading Internet users to believe that the inherently misleading disputed domain name belong to or are associated with the Complainant.

For the above reasons, the Panel finds that the condition of paragraph 4(a)(iii) of the Policy has been satisfied, *i.e.*, 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 <wartsila.cam> be transferred to the Complainant.

/Mario Soerensen Garcia/

Mario Soerensen Garcia

Sole Panelist

Date: March 24, 2023