

ADMINISTRATIVE PANEL DECISION

ALSTOM v. Hendrix Pluto

Case No. D2023-1732

1. The Parties

The Complainant is ALSTOM, France, represented by Lynde & Associates, France.

The Respondent is Hendrix Pluto, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <alstmogroup.net> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 19, 2023. On April 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 21, 2023, 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 May 1, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 21, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 26, 2023.

The Center appointed Ada L. Redondo Aguilera as the sole panelist in this matter on June 1, 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 company founded and organized in 1928 under the laws of France, which operates globally in the rail infrastructure, power generation and transmission, employing over 34,000 people in 60 countries. The Complainant owns various companies, which form the Alstom Group, including Alstom Transport, Alstom Power, Alstom Hydro, Alstom Grid, Alstom Holdings, Alstom Power Turbomachines, Alstom Management, and Alstom Wind. The Complainant's group operates worldwide, including Nigeria.

ALSTOM operates worldwide and plays a significant role in the manufacture and overhaul of rolling stock. The goods and services they produce are well-known throughout the world.

According to the Complainant, Nigeria, where the Respondent is reportedly established, is notably a key country for ALSTOM.

ALSTOM holds trademark registrations that comprise the word "ALSTOM" in numerous jurisdictions around the world, including the following:

- Nigerian Trademark Registrations N°62735 and N°57307 ALSTOM, both registered on July 20, 1998, duly renewed, in classes 9 and 12 respectively.
- International Registration N°706292 ALSTOM, registered on August 28, 1998, duly renewed, covering goods and services in classes 1, 2, 4, 6, 7, 9, 11, 12, 13, 16, 17, 19, 24, 35, 36, 37, 38, 39, 40, 41 and 42, designating notably Algeria, China, Cuba, Germany, Egypt, Democratic People's Republic of Korea, Japan, Mexico, Morocco, Russian Federation, Thailand, Viet Nam and the United Kingdom.
- European Union Trademark Registration N°948729 ALSTOM, registered on August 8, 1998, duly renewed, in classes 1, 2, 6, 7, 9, 11, 12, 13, 16, 17, 19, 24, 35, 36, 37, 38, 39, 40, 41 and 42;
- United States of America Trademark Registration N°85507365, registered on November 6, 2012, in class 12.

In particular, the denomination "Alstom Group" is widely used by the Complainant to designate the company ALSTOM and their subsidiaries. This expression appears in all the email addresses of the Complainant's employees.

The Complainant is also the registrant of numerous domain names under various generic and country-code Top-Level-Domains ("gTLDs" and "ccTLDs") that reflect its trademark, such as <alstom.com>, registered since January 20, 1998, and <alstomgroup.com> registered since November 14, 2000.

On January 27, 2023, the Complainant tried to contact the Respondent in order to clarify the reasons of the registration of the disputed domain name and try to settle amicably. The Registrant did not respond, despite a reminder sent on February 8, 2023.

The disputed domain name was registered on January 10, 2023.

The disputed domain name <alstmogroup.net> currently redirects to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant argues that the disputed domain name is confusingly similar to its ALSTOM trademark. Also, the Complainant argues that the Respondent has no rights or legitimate interests with respect to the disputed domain name and finally, that the Respondent registered and is using the disputed domain name in

bad faith. 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

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established that it has registered trademark rights in the ALSTOM trademark. As noted in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1: "Where the Complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case."

In order to establish the confusing similarity test, panels typically do a side-by-side comparison between the trademark and the domain name to establish if the complainant's trademark is recognizable within the domain name.

In this case, the disputed domain name is <alstmogroup.net>, which includes the complete trademark ALSTOM, with the "mo" instead of "om", and the additional term "group". This does not prevent a finding of confusing similarity under the first element.

In the present case, the disputed domain name comprises the Complainant's ALSTOM trademark in its entirety. As stated in [WIPO Overview 3.0](#), section 1.7: "[...] in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing."

Also, in cases where the domain name consists of a common, obvious, or intentional misspelling of a trademark (*i.e.*, typo-squatting) the domain name is considered to be confusingly similar to the relevant mark for purposes of the first element (see [WIPO Overview 3.0](#), section 1.9.). Due to the fact that the disputed domain consists of an obvious misspelling of the Complainant's ALSTOM trademark, with the part "mo" instead of "om", and the additional word "group" the Panel finds that the disputed domain name is confusingly similar to this mark.

Additionally, it is well established that the gTLD (in this case ".net") is generally disregarded when considering whether a disputed domain name is confusingly similar to the trademark in which the complainant has rights (see section 1.11 of the [WIPO Overview 3.0](#)).

For all the foregoing reasons, the Panel finds that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights to or legitimate interests in a disputed domain name by demonstrating any of the following:

- (i) before any notice to you of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

- (ii) The Respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) The Respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trademark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), a complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the Respondent to come forward with relevant allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent does come forward with evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is not referred to or commonly known by the disputed domain name or any related trademark. It claims it has not authorized the Respondent to use the trademark in any way including use in a domain name.

The Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not responded, and based on the record, the Panel is unable to conceive any basis upon which the Respondent could have any rights or legitimate interests in respect of the disputed domain name.

This Panel finds that the Respondent is not known under the disputed domain name and does not make any *bona fide* use, neither commercial nor noncommercial, of the same, being emphasized that the disputed domain name does not resolve towards an active webpage.

In the present case, the Complainant made a *prima facie* case that the Respondent lacks rights or legitimate interests to which the Respondent failed to respond.

For the foregoing reasons the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and the requirements of paragraph 4(a)(ii) of the Policy therefore are fulfilled.

C. Registered and Used in Bad Faith

In order to prevail under the Policy, the Complainant must show that the disputed domain name has been registered and is being used in bad faith.

The Complainant's ALSTOM trademarks have been continuously and extensively used for many years and have as a result acquired considerable reputation and goodwill worldwide. Accordingly, the Panel is satisfied that the Respondent must have been aware of the trademarks ALSTOM when it registered the disputed domain name, noting also that the disputed domain name is a clear misspelling of the trademark ALSTOM, with the addition of the term "group".

The Panel accepts the Complainant's submissions that the trademark ALSTOM is a distinctive, creative term, and that it is obvious that the Respondent registered the disputed domain name with the intention of referring to the Complainant's trademark and the services associated. The Panel further notes, that the disputed domain name was acquired long after the Complainant's ALSTOM trademarks became well-known. In view of the well-known character of the ALSTOM trademarks, it is difficult to believe that the Respondent was not aware of the Complainant and its activities, at the time it registered the disputed domain name, other Panelist have resolved a similar opinion, see for example the *Veuve Clicquot Ponsardin v. The Polygenix Group co*, WIPO Case No. [D2000-0163](#).

Also, the disputed domain name reproduces the denomination "Alstom Group", which is widely used by the Complainant, in a misspelled way, obviously a typo-squatting act. The misspelling of the expression "Alstom

Group” could lead the Internet users to fall on the website referring to the disputed domain name as an official domain name of the Complainant, due to the fact that the Complainant has a similar domain name and uses it as their server addresses. Additionally, internet users, clients or public in general could receive emails from the disputed domain name’s server address and could be confused, and may not be able to see the difference with the Complainant’s server address.

At the time of the filing of the Complaint and at the time of the decision, the disputed domain name resolved to an inactive website.

It has been established in various UDRP decisions that passive holding, under the appropriate circumstances, does not prevent a finding of bad faith. In *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), it was found that in order to establish that the registrant was using a domain name in bad faith it was not necessary to find that it had undertaken any positive action in relation to the domain name. See also, 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.

In the present case, the Panel finds that the disputed domain name is being used in bad faith due to the following factors: (i) the reputation of the Complainant’s trademark, (ii) the failure of the Respondent to submit a response, and (iv) considering the totality of the circumstances of this case, the implausibility of any good faith uses to which the disputed domain name may be put.

For all the foregoing reasons the Panel finds that the disputed domain name <alstmogroup.net> has been registered and used in bad faith.

In summary, this Panel finds that the Respondent, by choosing to register and use the disputed domain name, which is confusingly similar to the Complainant’s well-known trademark, in the absence of convincing evidence and rebuttal to the contrary from the Respondent, the choice of the disputed domain name and the conduct of the Respondent are indicative of registration and use of the disputed domain name in bad faith.

For all the foregoing reasons the Panel sustain that the Complaint fulfils the third condition of paragraph 4(a) 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 disputed domain name, <alstmogroup.net> be transferred to the Complainant.

/Ada L. Redondo Aguilera/

Ada L. Redondo Aguilera

Sole Panelist

Date: June 15, 2023