

## **ADMINISTRATIVE PANEL DECISION**

Wartsila Technology Oy Ab v. Toney Blire

Case No. D2023-3086

### **1. The Parties**

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

The Respondent is Toney Blire, Mexico.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 18, 2023. On July 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 19, 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 privacy service (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 21, 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 July 21, 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 July 26, 2023. In accordance with the Rules,

Paragraph 5, the due date for Response was August 15, 2023. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent’s default on August 16, 2023.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on August 25, 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 which operates in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. As of 2021, the Complainant has met sales of Euros 4.8 billion with over 17 000 employees.

The Complainant has a strong international presence with operations in over 200 locations across 68 countries.

The Complainant its affiliates, subsidiaries and associated companies own trademarks WÄRTSILÄ/ WARTSILA mark, including the following:

United States of America Trademark Registration Number 2078313 WÄRTSILÄ, registered on July 15, 1997, in class 7.

European Union Trademark Registration Number 000838466 WÄRTSILÄ, registered on February 21, 2000.

International, Trademark Registration Number 1005789 WÄRTSILÄ, registered on May 22, 2009, in classes 7, 9, 11, 12, 35, 37, 41, and 42.

European Union Trademark Registration Number 008304149 WÄRTSILÄ, registered on November 25, 2009, in classes 7, 9, 11, 12, 35, 37, 41, and 42.

European Union Trademark Registration Number 011765294 WARTSILA, registered on September 18, 2013, in classes 7, 9, 11, 12, 35, 37, 41, and 42.

The disputed domain name was registered on April 18, 2023 and does not currently resolve to an active website. The Complainant submitted evidence on record that the disputed domain name used to direct Internet users to Pay-Per-Click (PPC) advertisement links that redirected Internet users to unrelated offerings.

#### **5. Parties' Contentions**

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

The Complainant, in essence, claims that the disputed domain name is confusingly similar to the trademark WARTSILA in which the Complainant has rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

The trademark WARTSILA is a well known brand and has a strong international presence with operations in over 200 locations across 68 countries.

Finally, the Complainant requests the Panel to issue a resolution ordering the transfer of the disputed domain name to the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

As set forth in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Panel considers that the disputed domain name is confusingly similar to the Complainant's trademark WARTSILA.

The disputed domain name incorporates the same letters of the Complainant's trademark WARTSILA. Likewise, the trademark WARTSILA is recognizable within the disputed domain name and the disputed domain name is almost identical to the Complainant's trademark WARTSILA, except for the misplacement of the letter "i". Therefore, the disputed domain name is confusingly similar to the Complainant's trademark WARTSILA.

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark WARTSILA and that the requirements of paragraph 4(a) of the Policy 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 domain name by demonstrating any of the following non-exclusive defenses:

- (i) before any notice to it 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.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Furthermore, the disputed domain name incorporates the same letters as the Complainant's trademark WARTSILA, although the letter "i" has been misplaced and put at the end rather than between the letters "s" and "l". The disputed domain name constitutes an example of "typosquatting". The Respondent chose to mistype the disputed domain name for its confusing similarity to the WARTSILA trademark. Internet users may easily mistype WARTSILA, and land on the disputed domain name rather than the website of the Complainant. The misplacement of the abovementioned letters is not sufficient to distinguish the disputed domain name from the Complainant's trademark.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

### **C. Registered and Used in Bad Faith**

The Panel is satisfied that the Respondent must have been aware of the Complainant's trademark WARTSILA mentioned in section 4 above (Factual Background) when it registered the disputed domain name on April 18, 2023. By that time, the Complainant had long ago registered and intensely used the trademark WARTSILA.

By registering the disputed domain name, the Respondent was targeting the Complainant and its business.

The disputed domain name initially resolved to a PPC parking page with links to unrelated commercial operations in order to mislead Internet users into visiting the disputed domain name thinking they are engaging with the Complainant's official website and such use constitutes bad faith. The fact that there is a clear absence of rights or legitimate interests coupled with no explanation for the Respondent's choice of the disputed domain name, the nature of the misleading disputed domain name are indicative of bad faith (as stated in sections 3.2.1 and 3.5 of the [WIPO Overview 3.0](#)). The Panel finds that the Respondent registered and is using the disputed domain name in bad faith.

Finally, the current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3 of the [WIPO Overview 3.0](#).  
For the above reasons, the Panel finds that the requirements of paragraph 4(a) (iii) of the Policy have been fulfilled.

## **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 <wartslai.com> be transferred to the Complainant.

*/Miguel B. O'Farrell/*

**Miguel B. O'Farrell**

Sole Panelist

Date: September 8, 2023