

ADMINISTRATIVE PANEL DECISION

Wärtsilä Technology Oy Ab v. Kinchen Tom
Case No. D2024-4661

1. The Parties

The Complainant is Wärtsilä Technology Oy Ab, Finland, represented by SafeNames Ltd., United Kingdom ("U.K.").

The Respondent is Kinchen Tom, Andorra.

2. The Domain Names and Registrar

The disputed domain names <vvartslila.com> and <wartsilá.com> [<xn--wartsil-nwa.com>]¹ are registered with Hostinger Operations, UAB (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 12, 2024. On November 13, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On November 15, 2024, 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 (Privacy Protect, LLC (PrivacyProtect.org)) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 15, 2024, 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 the same November 15, 2024.

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 November 18, 2024. In accordance with the Rules,

¹ Representation of the ACE encoding of the internationalized domain name.

paragraph 5, the due date for Response was December 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 9, 2024.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on December 12, 2024. 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 company active in the field of smart technologies and complete lifecycle solutions for the marine and energy markets. The Complainant employs over 17,000 employees and is present in 79 countries.

Among other registrations, the Complainant owns the following trademark registrations:

- European Union trademark registration for WÄRTSILÄ no. 000838466, registered on February 21, 2000, in classes 7, 12, and 37;
- European Union trademark registration for WARTSILA no. 011765294, registered on September 18, 2013, in classes 7, 9, 11, 12, 35, 37, 41, and 42.

The Complainant operates the domain name <wartsila.com> for its official website and uses numerous other domain name registrations incorporating the Complainant's mark WARTSILA.

The disputed domain names <vvartslila.com> and <wartsilá.com> were registered respectively on September 25, 2024, and on October 14, 2024.

At the time of filing of the Complaint, the disputed domain name <vvartslila.com> resolved to an inactive website and the disputed domain name <wartsilá.com> resolved to a parked page provided by the Registrar.

The MX records (i.e. the mail exchanger records specifying the mail server responsible for accepting email messages) for the disputed domain name <wartsilá.com> suggest that this domain name is or was possibly used for email communication. Furthermore, on one occasion at least, the Respondent impersonated an employee of the Complainant in an email sent to a customer of the Complainant, soliciting payment to a fraudulent account. Fake invoices bearing the Complainant's logo were attached to this email. The email headers for this email show a return email address corresponding to the disputed domain name <vvartslila.com>.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names.

Notably, the Complainant contends that the disputed domain names are confusingly similar to its WÄRTSILÄ and WARTSILA trademarks. The disputed domain name <vvartslila.com> differs from the WÄRTSILÄ and WARTSILA trademarks by the addition of the letter "l" and the replacement of the letter "w" with the double letter "v", which in combination mimic the letter "w". This substitution and addition of letters constitute, according to the Complainant, a deliberate misspelling of the WARTSILA trademark intended to emulate the Complainant's trademark, commonly referred to as "typosquatting". The disputed domain name <wartsilá.com> incorporates the entirety of the WÄRTSILÄ and WARTSILA trademarks, the only difference being the

replacement of the letter “a” with an accented “á”. According to the Complainant, this substitution of letters does not dispel any confusing similarity.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain names for the following reasons: (i) the Respondent has no trademarks rights in the terms “wärtsilä” or “wartsila”, and neither has the Respondent received any license or authorization from the Complainant to use any domain names featuring its trademarks; (ii) the Respondent is not commonly known by the distinctive terms “wärtsilä” or “wartsila”; (iii) the Respondent has not used, nor prepared to use the disputed domain names in connection with a bona fide offering of goods or services. The Complainant submits that the disputed domain name <vvartlila.com> was used to carry out phishing activity by way of scam emails, and that the disputed domain name <wartsilá.com> resolved to a parking page provided by the Registrar, which do not amount to a bona fide offering of goods or services.

Finally, the Complainant alleges that the Respondent both registered and uses the disputed domain names in bad faith. According to the Complainant, it is highly implausible that the Respondent was unaware of the Complainant's rights to the WÄRTSILÄ and WARTSILA trademarks at the time of registration, given the long use and reputation of the Complainant's trademarks and the striking similarity between the trademarks and the disputed domain names. Therefore, the Complainant alleges that the Respondent registered the disputed domain names in bad faith. With respect to the use in bad faith, the Complainant alleges that the disputed domain name <vvartlila.com> has been used to intentionally mislead the Complainant's customers for financial gain by impersonating the Complainant by sending phishing emails. Specifically, the Respondent pretended to be an employee of the Complainant and set up a return email address “[...]@vvartlila.com” to correspond with the Complainant's customer in an attempt to solicit payment. The Complainant's passive holding of the disputed domain name <wartsilá.com> also constitutes bad faith use. The presence of MX records indicates furthermore that the Respondent is capable of engaging in phishing activities through email distribution.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

- (i) the domain name registered by the respondent is identical or confusingly similar to 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 domain name; and
- (iii) the domain name registered by the respondent has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark WARTSILA is recognizable within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

UDRP panels consider that the misspelling of the complainant's trademark (typosquatting) can constitute confusing similarity for purposes of the first element of paragraph 4(a) of the Policy. This is the case if the disputed domain name consists of a common, obvious or intentional misspelling. [WIPO Overview 3.0](#), section 1.9.

In the present case, the disputed domain names differ for the Complainant's WARTSILA trademark only in that, in the disputed domain name <vvartslila.com> the letter "w" was replaced by doubling the letter "v", which in combination resembles the letter "w", and with the addition of the letter "l"; and, in the disputed domain name <wartsilá.com> an accent has been added to the last a, which becomes "á".

In the Panel's opinion, in both disputed domain names the mark WARTISLA remains clearly recognizable despite the intentional misspellings, which do not prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademark.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

Indeed, based on the information submitted by the Complainant, the Complainant has not granted the Respondent authorization to use its trademark within the disputed domain names. Moreover, there is no evidence indicating that the Respondent is commonly known by the disputed domain names.

Furthermore, the record contains no evidence that the Respondent has used or made demonstrable preparations to use the disputed domain names in connection with any type of bona fide offering of goods or services. On the contrary, the Respondent appears to have used one of the disputed domain names to impersonate the Complainant as part of a phishing scam.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Given that the trademark WARTSILA of the Complainant has been widely used before the registration of the disputed domain names, and does not have a perceivable descriptive or generic meaning, the Panel accepts that the Respondent was aware of the existence of the Complainant and of its WARTSILA trademark at the time of the registration of the disputed domain names. Accordingly, the Panel finds that the disputed domain names were registered in bad faith.

In the present case, there is no indication that the Respondent connected any of the disputed domain names to an active website.

Regarding the disputed domain name <warsilá.com>, panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Although panels 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, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes in particular the reputation of the Complainant's trademark and the composition of the disputed domain name <warsilá.com>, which consists in a deliberate misspelling of the Complainant's trademark. Accordingly, the Panel finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy. Furthermore, the Respondent failed to submit a response or provide any evidence of actual or contemplated good faith use. Also, the Respondent did not appear to have provided accurate contact details upon the registration of the disputed domain names because the Written Notice could not be delivered to the Respondent's address confirmed by the Registrar. In any case, it is difficult to imagine what legitimate use the Respondent could make of the disputed domain names, given the fact that there is no relationship between the Respondent and the Complainant. If the disputed domain names were connected to an active website, consumers would be likely to mistakenly assume that such websites are operated or endorsed by the Complainant, when such is not the case.

Regarding the disputed domain name <vvartslila.com>, panels have held that the use of a domain name for purposes other than to host a website may constitute bad faith. Such purposes include sending email, phishing, identity theft, or malware distribution. Many such cases involve the respondent's use of the disputed domain name to send deceptive emails, e.g., to obtain sensitive or confidential personal, or to solicit payment of fraudulent invoices by the complainant's actual or prospective customers. [WIPO Overview 3.0](#), section 3.4.

In the present case, the Panel finds that the Respondents' conduct of sending at least one email (indicating the disputed domain name <vvartslila.com> as a return email address), in which the Respondent impersonated an employee of the Complainant to solicit payment of fraudulent invoices by a customer of the Complainant constitutes use of the disputed domain name in bad faith.

Based on the available record, the Panel finds that the Complainant has established the third element 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 names <vvartslila.com> and <wartsilá.com> [<xn--wartsil-nwa.com>] be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: December 24, 2024