

## **ADMINISTRATIVE PANEL DECISION**

UMICORE v. Sharon Dlamini

Case No. D2022-4459

### **1. The Parties**

Complainant is UMICORE, Belgium, represented by Gevers Legal NV, Belgium.

Respondent is Sharon Dlamini, South Africa.

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

The disputed domain name <umicoreengineering.com> 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 November 22, 2022. On November 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 23, 2022, the Registrar transmitted by email to the Center its verification response confirming that 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 Respondent of the Complaint, and the proceedings commenced on November 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 14, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 16, 2022.

The Center appointed Lorelei Ritchie as the sole panelist in this matter on December 21, 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

Complainant is a multinational materials technology and recycling company based in Belgium. Since at least 2002, Complainant has offered its products and services under the UMICORE mark. Complainant is the owner of several trademark registrations for its UMICORE mark. These include, among others, International Registration No. 775794 (registered January 22, 2002). Complainant also owns the registration for the domain name <umicore.com>, which Complainant uses to connect with prospective consumers online.

The disputed domain name was registered on June 16, 2022. The disputed domain name is not currently linked to an active website. Respondent has no affiliation with Complainant, nor any license to use Complainant's marks.

#### 5. Parties' Contentions

##### A. Complainant

Complainant contends that (i) the disputed domain name is identical or confusingly similar to Complainant's trademarks, (ii) Respondent has no rights or legitimate interests in the disputed domain name; and (iii) Respondent registered and is using the disputed domain name in bad faith.

Specifically, Complainant contends that it owns registrations for the UMICORE mark, for which Complainant has "extensive use and advertising". Complainant contends that Respondent has incorporated the UMICORE mark into the disputed domain name with only the addition of the dictionary term "engineering", which Complainant contends is "descriptive of the sector in which the Complainant operates".

Complainant contends that Respondent lacks rights or legitimate interest in the disputed domain name, and rather has registered and is using it in bad faith, having simply acquired the disputed domain name for Respondent's own commercial gain, likely in order to confuse consumers seeking web-based information about Complainant and its goods and services. Complainant further included evidence that Respondent has engaged in a pattern of conduct that establishes bad faith under the UDRP.

##### B. Respondent

Respondent did not reply to Complainant's contentions.

#### 6. Discussion and Findings

##### A. Identical or Confusingly Similar

The Panel must first determine whether the disputed domain name <umicoreengineering.com> is identical or confusingly similar to a trademark or service mark in which Complainant has rights in accordance with paragraph 4(a)(i) of the Policy. The Panel finds that it is. The disputed domain name incorporates in full Complainant's registered mark UMICORE, and adds the dictionary term "engineering" as a telescoped term.

The Panel notes that even incorporating the "dominant feature" of a mark may be sufficient for a finding under this first element of the UDRP. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), paragraph 1.7. Furthermore, numerous UDRP panels have agreed that supplementing or modifying a trademark with generic or descriptive words does not prevent a finding of confusing similarity for purposes of satisfying this first prong of paragraph 4(a)(i) of the Policy. See, for example, *Inter Ikea Systems B.V. v. Polanski*, WIPO Case No. [D2000-1614](#) (transferring <iikeausa.com>); *General Electric Company v. Recruiters*, WIPO Case No. [D2007-0584](#) (transferring <ge-recruiting.com>); *Microsoft Corporation v. Step-Web*, WIPO Case No. [D2000-1500](#) (transferring <microsofthome.com>); *CBS Broadcasting, Inc. v. Y2K Concepts Corp.*, WIPO Case No. [D2000-1065](#)

(transferring <cbsone.com>).

The Panel therefore finds that the disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights for purposes of paragraph (4)(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

The Panel next considers whether Complainant has shown that Respondent has no “rights or legitimate interest”, as must be proven to succeed in a UDRP dispute. Paragraph 4(c) of the Policy gives examples that might show rights or legitimate interests in a domain name. These examples include: (i) use of the domain name “in connection with a *bona fide* offering of goods or services”; (ii) demonstration that respondent has been “commonly known by the domain name”; or (iii) “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”.

As is described in the [WIPO Overview 3.0](#), “while 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 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.”

No evidence has been presented to the Panel that might support a claim of Respondent’s rights or legitimate interests in the disputed domain name, and Respondent has no license from, or other affiliation with, Complainant.

Therefore, the Panel finds that Complainant has provided sufficient evidence of Respondent’s lack of “rights or legitimate interests” in accordance with paragraph 4(a)(ii) of the Policy which Respondent has not rebutted.

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

There are several ways that a complainant can demonstrate that a domain name was registered and used in bad faith. As noted in Section 4 of this Panel’s decision, the disputed domain name is not currently linked to an active website. It is nevertheless well established that having a passive website does not necessarily shield a respondent from a finding of bad faith. See [WIPO Overview 3.0](#), paragraph 3.3, which notes that the “non-use of a domain name” does not necessarily negate a finding of bad faith. Rather, a panel must examine “the totality of the circumstances”, including, for example, whether a complainant has a well-known trademark, and whether a respondent conceals his/her identity and/or replies to the complaint. Respondent here did not formally respond to the Complaint and provided an undeliverable address to the Registrar. See also *Umicore v. Qin Xian Sheng*, WIPO Case No. [D2022-1615](#).

The Panel further notes that Complainant has provided evidence that Respondent is the registrant for other domain names that appear to include the trademarks of third parties, such as <unileverquotation.com> and <unicomergroups.com>. This also evidences a pattern of conduct such as to demonstrate bad faith in accordance with paragraph 4(b)(ii).

Therefore, the Panel finds sufficient evidence that Respondent registered and used the disputed domain names in bad faith for purposes of paragraph (4)(a)(iii) 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 <umicoreengineering.com> be transferred to Complainant.

*/Lorelei Ritchie/*

**Lorelei Ritchie**

Sole Panelist

Date: January 4, 2023