

ADMINISTRATIVE PANEL DECISION

Cummins Inc. v. Morgan Ben
Case No. D2023-1093

1. The Parties

The Complainant is Cummins Inc., United States of America (“United States”), represented by Mayer Brown LLP, United States.

The Respondent is Morgan Ben, Austria.

2. The Domain Name and Registrar

The disputed domain name <cumminns.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 March 11, 2023. On March 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 15, 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 March 17, 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 March 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 12, 2023.

The Center appointed Zoltán Takács as the sole panelist in this matter on April 18, 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

Founded in 1919 and headquartered in Columbus, Indiana (United States), the Complainant (formerly known as Cummins Engine Company, Inc.) is one of the world's largest independent engine manufacturer.

The Complainant has been listed as one of the Fortune 500 companies since 1955 and is currently ranked number 149.

The Complainant currently employs about 55,000 people worldwide and serves customers in about 190 countries, including in the United States, Europe, and India through a network of company-owned, independent distributor and dealer locations.

The Complainant is among others owner of the United States Trademark Registration No. 4407227 for the word mark CUMMINS, registered since September 24, 2013 for goods of classes 6-9 of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

The disputed domain name, which was registered on May 2, 2022 did not resolve to an active website. However, the Respondent used the disputed domain name to create fake email addresses for the purpose of impersonating the Complainant and attempting to carry out a financial fraud.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is nearly identical to its CUMMINS trademark since the addition of another letter "n" to the trademark in the disputed domain name is not sufficient to distinguish the disputed domain name from its trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is unable to rely on any of the circumstances set out in paragraphs 4(c)(i), (ii), or (iii) of the Policy.

The Complainant contends that the Respondent's attempt to falsely appear associated or affiliated with the Complainant and commit a financial fraud is clear evidence of bad faith.

The Complainant requests that the disputed domain name be transferred from the Respondent to the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that;

- (i) the 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 domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Under paragraph 4(a)(i) of the Policy, there are two requirements which the Complainant must establish, first that it has rights in a trademark or service mark, and second that the disputed domain name is identical or confusingly similar to the trademark or service mark.

It has been a consensus view among previous UDRP panels that if the complainant owns a nationally or regionally registered trademark, then it generally satisfies the threshold requirement of having trademark rights.

The Complainant produced evidence of having registered rights in the CUMMINS trademark and the Panel finds that the United States Trademark Registration No. 4407227 satisfies the requirement of having trademark rights for the purpose of the Policy.

Having determined the presence of the Complainant's trademark rights, the Panel next assesses whether the disputed domain name is identical or confusingly similar to the Complainant's trademark.

According to section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") 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. This test typically 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 Complainant's CUMMINS trademark is readily recognizable in disputed domain name. The only difference between the Complainant's trademark and the disputed domain name is the addition of another letter "n" to the trademark in the disputed domain name. The Panel considers this obvious misspelling of the Complainant's trademark a clear example of typosquatting. According to section 1.9 of the [WIPO Overview 3.0](#), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by UDRP panels to be confusingly similar to the relevant mark for the purposes of the first element. This stems from the fact that the domain name contains sufficiently recognizable aspects of the relevant mark.

According to section 1.11.1 of the [WIPO Overview 3.0](#), the applicable Top-Level Domain ("TLD") in a domain name (in this case ".com") is viewed as a standard registration requirement and as such is generally disregarded under the first element confusingly similar test.

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant's trademark who has for that reason satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(c) of the Policy, a respondent may demonstrate its rights or legitimate interests in a domain name by showing any of the following circumstances, in particular but without limitation:

- (i) its use of, or demonstrable preparation to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods and services;

- (ii) it has been commonly known by the domain name;
- (iii) it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

In the present case, the Complainant has submitted evidence of holding well-established prior rights in the CUMMINS trademark.

The Complainant has never authorized the Respondent to use its trademark in a domain name or otherwise.

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

According to section 2.1 of 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 the 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.

The Respondent used the disputed domain name to create fake email addresses, attempting to impersonate the Complainant and carry out an apparent financial fraud. UDRP panels have categorically held that use of a domain name for impersonation or other types of fraud can never confer rights of legitimate interests on a respondent (see section 2.13.1. of the [WIPO Overview 3.0](#)).

The Respondent failed to respond, and by doing so failed to offer the Panel any type of evidence set forth in paragraph 4(c) of the Policy, or otherwise counter the Complainant’s *prima facie* case.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists a number of factors which, if found by the panel to be present, shall be evidence of registration and use of a domain name in bad faith. This non-exclusive list includes:

- (i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

The Complainant's CUMMINS trademark, which the disputed domain name fully incorporates, is inherently distinctive. A basic Internet search against the disputed domain name returns solely the Complainant and its businesses. These circumstances in addition to the fact that the Respondent attempted to impersonate the Complainant in view of the Panel show that the Respondent was aware of the Complainant's business and trademark at the time of obtaining the disputed domain name and chose to register it in order to target the Complainant's trademark within the meaning of paragraph 4(b)(iv) of the Policy.

Furthermore, for the reasons discussed above the Panel considers the Respondent's obvious misspelling of the Complainant's trademark in the disputed domain name a clear case of typosquatting registration which is in itself evidence of bad faith (see *National Association of Professional Baseball Leagues, Inc., d/b/a Minor League Baseball v. John Zuccarini*, WIPO Case No. [D2002-1011](#)).

Also, the Respondent attempted to impersonate the Complainant through the use of the disputed domain name in creation of fake email addresses in order to perpetrate financial fraud. Such conduct is disruptive of the Complainant's business and constitutes bad faith under the Policy (see section 3.4 of the [WIPO Overview 3.0](#) and *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#)).

The fact that the disputed domain name did not resolve to an active website since registration does not alter the Panel's conclusion. According to section 3.3 of the [WIPO Overview 3.0](#), passive holding of a disputed domain name does not prevent a finding of bad faith.

For the reasons set out above, the Panel finds that the Respondent has registered and is using the disputed domain name in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

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 <cumminns.com> be transferred to the Complainant.

/Zoltán Takács/

Zoltán Takács

Sole Panelist

Date: May 2, 2023