

## **ADMINISTRATIVE PANEL DECISION**

UMICORE v. John Loveme

Case No. D2023-3958

### **1. The Parties**

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

The Respondent is John Loveme, United States of America (“U.S.” or “USA”).

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

The disputed domain name <umiicore.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 September 21, 2023. On September 22, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 22, 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 (privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 26, 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 September 27, 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 October 5, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 26, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on November 2, 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 Belgium based circular materials technology company with an expertise in the fields of material science, chemistry and metallurgy and more than 10,000 employees.

The Complainant's registered company name is UMICORE; the Complainant also holds several trademark registrations containing the mark UMICORE, *inter alia*

- International trademark UMICORE (word), Reg No 775794, registered January 22, 2002, designated for numerous countries around the world, e.g., Australia, China, Germany, Italy, Japan and France; and
- U.S. trademark UMICORE (word), Reg. No. 692900, registered on July 23, 2001 (Annex 3 to the Complaint).

The disputed domain name was registered on April 29, 2023 (Annex 1 to the Complaint).

Currently, the disputed domain name refers to a parking page with pay-per-click links addressing websites with e.g., information about distance learning at universities (Panelist's own research on November 11, 2023).

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

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

The Complainant is a global materials technology and recycling group, with more than 10,000 employees and a turnover of EUR 10.4 billion. It dedicates most of its R&D efforts to clean technologies, such as emission control catalysts, materials for rechargeable batteries and recycling. The Complainant's activities are carried out through offices which are located across Europe, North America (USA and Canada), Asia and Africa. During its more than 200-year history, the Complainant has developed global name-recognition and goodwill and has become a household name. A significant component of the Complainant's success has been its investment in its brand and intellectual property.

The disputed domain name is identical or confusingly similar to the trademark in which the Complainant has rights: A side-by-side comparison of the disputed domain name and the Complainant's registered trademark shows that the Complainant's trademark is clearly included and recognizable; the only alteration made in the disputed domain name compared to the Complainant's mark is the additional letter "i", which is not sufficient to distinguish the disputed domain name from the Complainant's mark UMICORE.

Further, the Respondent has no rights or legitimate interests in respect of the disputed domain name: The Respondent has no trademark with regard to the disputed domain name and is not commonly known under it; there is no connection or affiliation with the Complainant whatsoever nor has it received any license or consent, express or implied, to use the mark UMICORE in a domain name or in any other manner; and the Respondent is not making a legitimate, non-commercial or fair use of the disputed domain name.

Finally, the disputed domain name was registered and is being used in bad faith: The Respondent registered the disputed domain name well after the Complainant's trademark was in use and became well-known. The Respondent must have been aware of the Complainant and its mark UMICORE when registering the disputed domain name. Moreover, the disputed domain name contains a common, obvious or intentional misspelling of the Complainant's mark. (instead of a single "i", a double "ii").

Furthermore, the disputed Domain Name has active MX records, which entails that the Respondent can send emails through the email address “@umiicore.com”.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (i) the disputed domain name 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 with respect to the disputed domain name; and
- (iii) the disputed domain name 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. 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.

In the case at issue, the Complainant submitted evidence, which incontestably and conclusively establishes rights in the UMICORE mark.

The disputed domain name is confusingly similar to the UMICORE mark in which the Complainant has rights since the Complainant’s UMICORE mark is clearly recognizable in the disputed domain name. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

This is the case at hand: The addition of the letter “i” in the disputed domain name does not prevent a finding of confusing similarity; in fact, the disputed domain name consists of a common and obvious misspelling of the Complainant’s trademark (instead of a single “i”, a double “ii”; see section 1.9 of the [WIPO Overview 3.0](#)).

Finally, it has also long been held that generic Top-Level Domains are generally disregarded when evaluating the confusing similarity under the first element.

Therefore, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

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

(see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's distinctive mark in its entirety together with a common, obvious and intentional misspelling of the Complainant's trademark cannot be considered fair as these confuse users seeking or expecting the Complainant.

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) In the present case the Complainant has rights and is the owner of the distinctive mark UMICORE, which is registered and used in many jurisdictions around the world long before the registration of the disputed domain name. Moreover, the Complainant registered and is using the domain name <umicore.com> to address its company website.

It is inconceivable for this Panel that the Respondent registered or has used the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's distinctive trademark UMICORE entirely together with a common, obvious and intentional misspelling of the Complainant's UMICORE mark.

Further, it is well-settled case law that the practice of typosquatting may in itself be evidence of a bad faith registration of a domain name (see, e.g., *Longs Drug Stores California, Inc. v. Shep Dog*, WIPO Case No. [D2004-1069](#); *Wal-Mart Stores, Inc. v. Longo*, WIPO Case No. [D2004-0816](#); *Compagnie Générale des Etablissements Michelin v. Super Privacy Service LTD c/o Dynadot / Reed Mueller*, WIPO Case No. [D2021-1771](#); *Philip Morris Products S.A. v. Rohan Mubbashir Khan*, WIPO Case No. [D2022-4582](#); *Sopra Steria Group v. Sopra Steria, soprasteria*, WIPO Case No. [D2023-2397](#)).

Moreover, Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark by an unaffiliated entity (as it is in the present case) can by itself create a presumption of bad faith (see section 3.1.4 [WIPO Overview 3.0](#))

(ii) The Complainant has put forward evidence that the disputed domain name resolved to a website which contained pay-per-click links to other websites. In doing so, the Respondent has intentionally attempted to attract Internet users to its websites for commercial gain, by creating a likelihood of confusion with the Complainant's distinctive trademark as to the source, sponsorship, affiliation or endorsement of its website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith use of the disputed domain name.

Furthermore, this Panel concludes that the disputed domain name is being used in bad faith, putting emphasis on the following:

- the Complainant's trademark UMICORE is distinctive and used as domain name to address the Complainant's website, e.g., <umicore.com>;

- the disputed domain name consists of a common, obvious, or intentional misspelling of the Complainant's trademark UMICORE which is a typical case of typosquatting which in itself constitutes bad faith;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the disputed domain name incorporates the Complainant's trademark in its entirety, and is thus suited to confuse users seeking or expecting the Complainant and its site; and
- there is no conceivable plausible reason for good faith use with regard to the disputed domain name.

Taking all these aspects and evidence into consideration and the fact that the Respondent failed to respond to the Complaint supports the finding that the disputed domain name has been registered and is being used in bad faith under 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 <umiicore.com> be transferred to the Complainant.

*/Peter Burgstaller/*

**Peter Burgstaller**

Sole Panelist

Date: November 16, 2023