

## **ADMINISTRATIVE PANEL DECISION**

Cummins Inc. v. Milen Radumilo, Milen Radumilo  
Case No. D2023-1714

### **1. The Parties**

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

The Respondent is Milen Radumilo, Milen Radumilo, Romania.

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

The disputed domain name <customerpaymentcummins.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 19, 2023. On April 19, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 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 Respondent (Tucows, Inc. / Contact Privacy Inc. Customer 0165588498) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 28, 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 May 3, 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 May 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 28, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 6, 2023.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on June 12, 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 following facts are undisputed.

Founded in 1919, the Complainant (formerly known as Cummins Engine Company Inc.) designs, manufactures, distributes, and services diesel and natural gas engines and related technologies, including fuel systems, controls, air handling, filtration, emission solutions, and electrical power generation systems. Headquartered in Columbus, Indiana, United States the Complainant currently employs more than 60,000 people worldwide and serves customers in about 190 countries and territories, including in the United States, Europe, and India through a network of about 600 company-owned and independent distributor locations and about 7,200 dealer locations. In 2022, the Complainant's total net income was approximately USD 2.2 billion, and its total revenue was USD 28.1 billion. The Complainant is currently listed on the New York Stock Exchange (NYSE: CMI) and is one of the world's largest independent engine manufacturers. The Complainant has been listed as one of the Fortune 500 companies since 1955 and is currently ranked number 149.

The Complainant is the owner of hundreds of trademark registrations around the world for marks comprising or incorporating "CUMMINS" and/or its device mark including the name "CUMMINS", including but not limited to its European Union trademark CUMMINS (word mark), with registration number 1373513, applied for on November 5, 1999 and registered on January 12, 2001, for goods in class 7 ("Trademark").

The Complainant operates a webpage accessible via the domain name <customerpayment.cummins.com>. Official invoices issued by the Complainant instruct recipients to log on to <customerpayment.cummins.com> to pay online. <customerpayment.cummins.com> then redirects to the Complainant's website.

Bitdefender (a virus scanner not associated with the Complainant) detected that the disputed domain name is being used to distribute malware and spyware. Virustotal reports eight (8) security vendors flagging the disputed domain name as malicious.

The disputed domain name was registered on October 31, 2022. The Respondent is not currently using the disputed domain name in connection with an operational website. The website redirects and cycles to different websites, such as "cybersport.io", "ww1.customerpaymentcummins.com", and "lampsplus.com".

The Courier the Center used for sending the Written Notice to the Respondent, informed the Center that the address of the Respondent was a "bad address".

#### **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 name.

Notably, the Complainant contends that the disputed domain name is nearly identical to the Complainant's official subdomain <customerpayment.cummins.com> and to the Trademark and its other trademarks.

Furthermore, the Complainant first began using the CUMMINS trademarks in 1919 and these CUMMINS trademarks are now famous and immediately recognizable to consumers as being associated with the

Complainant and its business. The Respondent registered the disputed domain name over 100 years after the CUMMINS trademark was first used. The Complainant has not consented to or otherwise authorized the Respondent's use of these trademarks.

The Respondent used or is using the disputed domain name to impersonate the Complainant in an effort to mislead the Complainant's customers into visiting the disputed domain name where the Complainant's customers will be exposed to malware and spyware. The Respondent thus has no rights or legitimate interests.

Due to the worldwide fame of the CUMMINS trademarks, Respondent is clearly aware of the Complainant and the CUMMINS trademarks and is using the disputed domain name to unfairly take advantage of the confusing similarity between Trademark and the disputed domain name.

The Respondent has no rights or legitimate interests in the disputed domain name, which is in itself evidence of bad faith. The disputed domain name also does not reflect or correspond to the Respondent's name. Due to the worldwide fame of the CUMMINS trademarks, it is inconceivable that the Respondent was not aware of the CUMMINS trademarks at the time it registered the disputed domain name. It is clear that the disputed domain name was registered to mislead, confuse and potentially perpetrate identity theft against consumers.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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.

Based on the available record, the Panel finds 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

Based on the available record, the Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

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

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

While the addition of "customerpayment" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, 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.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Given the Complainant’s long-standing use of the Trademark, particularly for its payment portal located through the domain name <customerpayment.cummins.com>, it is clear that the Respondent is using the confusingly similar disputed domain name to impersonate the Complainant for malicious purposes.

Panels have held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds the second element of the Policy has been established.

## C. Registered and Used in Bad Faith

The Panel refers to its considerations under 6.B.

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.

These circumstances include, but are not limited to:

The Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name. Paragraph 4(b)(i) of the Policy, and [WIPO Overview 3.0](#), section 3.1.1.

The Respondent has registered the disputed domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, and the Respondent has engaged in a pattern of such conduct. Paragraph 4(b)(ii) of the Policy, and [WIPO Overview 3.0](#), section 3.1.2.

The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor. Paragraph 4(b)(iii) of the Policy, and [WIPO Overview 3.0](#), section 3.1.3.

The Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 the Respondent's website or location or of a product or service on the Respondent's website or location. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Here, the evidence demonstrates that the disputed domain name has been used in a dynamic redirection scheme resulting in various third party security sites ultimately flagging the disputed domain name for potential security risks associated with phishing and malware distribution. Given the well-known status of the CUMMINS trademark and the Complainant's use of the domain name <customerpayment.cummins.com>, it is apparent that the Respondent knew of the Complainant and intentionally registered the inherently misleading disputed domain name to mislead unsuspecting Internet users for its commercial gain and to the detriment and disruption of the Complainant's business.

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

In the present case, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Respondent must have been aware of the Complainant and its Cummins trademarks when registering the disputed domain name and has clearly been targeting the Complainant and its customers with malicious intent. Such findings are also confirmed by the lack of a Response and the apparent listing of a false address in the Whois details.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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, <customerpaymentcummins.com>, be transferred to the Complainant.

*/Willem J. H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: June 20, 2023