

## **ADMINISTRATIVE PANEL DECISION**

UMICORE v. fei dusun and tech Anderson

Case No. D2023-5025

### **1. The Parties**

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

Respondents are fei dusun, China; and tech Anderson, United Kingdom (“UK”).

### **2. The Domain Names and Registrars**

The disputed domain name <eu-umcore.com> is registered with NameSilo, LLC.

The disputed domain name <umecore.com> is registered with Gname.com Pte. Ltd.

(NameSilo, LLC and Gname.com Pte. Ltd. are hereinafter referred to as the “Registrar”).

### **3. Procedural History**

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 1, 2023. On December 4, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On December 4 and 5, 2023, respectively, 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 Respondents (Anonymous) and contact information in the Complaint.

The Center sent an email communication to Complainant on December 8, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity. Complainant filed an amendment to the Complaint in English on January 11, 2024.

On December 8, 2023, the Center informed the Parties in Chinese and English, that the language of the registration agreement for the disputed domain name <umecore.com> is Chinese. On January 9, 2024, Complainant requested English to be the language of the proceeding. Respondents did not submit any comment on Complainant’s submission.

The Center verified that the Complaint together with the amendment to 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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on January 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 4, 2024. Respondents did not submit any response. Accordingly, the Center notified Respondents’ default on February 5, 2024.

The Center appointed Yijun Tian as the sole panelist in this matter on February 15, 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**

### **A. Complainant**

Complainant, UMICORE, is a company incorporated in Belgium. It is a global materials technology and recycling group with over 10,000 employees, generating EUR 10.4 billion in turnover. Specialising in clean technologies like emission control catalysts and batteries, UMICORE operates across Europe, North America, Asia, and Africa. With a 200-year history, it has achieved significant brand recognition and success through its focus on intellectual property and brand investment.

Complainant has rights in the UMICORE related marks. Complainant is the owner of numerous UMICORE trademarks worldwide, including the United States of America trademark registration for UMICORE, registered on July 21, 2011 (registration number: 3980169); and the International trademark registration for UMICORE, registered on January 22, 2002 (registration number: 775794) (Annex 3 to the Complaint).

### **B. Respondents**

Respondents are fei dusun, China, and tech Anderson, UK.

The disputed domain name <eu-umcore.com> was registered by tech Anderson, UK, on September 19, 2023.

The disputed domain name <umecore.com> was registered by fei dusun, China, on September 19, 2023.

According to the Complaint and relevant evidence provided by Complainant, the disputed domain name <eu-umcore.com> has resolved to an inactive website. The disputed domain name <umecore.com> resolved to a website offering to sell lighting products (Annex 5 to the Complaint).

## **5. Parties’ Contentions**

### **A. Complainant**

Complainant contends that the disputed domain names closely resemble their registered trademark, with only minor alterations. The disputed domain name <eu-umcore.com> integrates the trademark entirely, with only minor modifications like omitting “i” and adding “eu” for Europe, alongside “.com”. The disputed domain name <umecore.com> differs from the trademark solely by substituting “i” with “e”. These alterations are insufficient to distinguish the disputed domain names from Complainant’s trademark, potentially leading to confusion among consumers.

Complainant contends that Respondents have no rights or legitimate interests in the disputed domain names.

Complainant contends that the disputed domain names were registered and are being used in bad faith.

Complainant requests that the disputed domain names be transferred to it.

## **B. Respondents**

Respondents did not reply to Complainant's contentions.

## **6. Discussion and Findings**

### **6.1. Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name <eu-umcore.com> is English. The language of the Registration Agreement for the disputed domain name <umecore.com> is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondents to the effect that the language of the proceeding should be English. Complainant initially filed its Complaint in English, and has requested that English be the language of the proceeding for the following reasons:

- (a) concerning the disputed domain name <eu-umcore.com>, the language of the Registration Agreement is English. Furthermore, the inclusion of the UMICORE brand and the abbreviation "eu" corresponding to "Europe" suggests the registrant's familiarity with English;
- (b) regarding the disputed domain name <umecore.com>, the content showcased on the associated website is exclusively in English; and
- (c) translating the Complaint would unjustly burden and disadvantage Complainant, potentially prolonging the procedure and exposing both Complainant and Internet users to risks for an extended period.

Respondents did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

On the record, Respondent, tech Anderson, appears to be located in the UK and is thus presumably a native English speaker; Respondent, Fei Dusun, appears to be located in China and is thus presumably not an English speaker but a native Chinese speaker; but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain names are registered in Latin characters, particularly containing English terms (e.g., "core", and "eu" - abbreviation of "Europe", rather than Chinese script; (b) the generic Top-Level Domain ("gTLD") of the disputed domain names is ".com", so the disputed domains names seem to be prepared for users worldwide, particularly English speaking countries; (c) the webpages, which the disputed domain name <umecore.com> resolved to, were in the English language; (d) the Center has notified Respondents of the language of the proceeding in both Chinese and English, and Respondents have indicated no objection to Complainant's request that English be the

language of the proceeding; and (e) the Center also notified Respondents in both Chinese and English of the Complaint, and informed Respondents that it would accept a response in either English or Chinese, but Respondents chose not to file any response.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

## **6.2. Consolidation: Multiple Respondents**

The amended Complaint was filed in relation to nominally different domain name registrants. Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See [WIPO Overview 3.0](#), section 4.11.2.

As regards common control, the Panel finds that Complainant has provided sufficient evidence to establish that the disputed domain names or corresponding websites are subject to common control, for the following reasons:

- (a) both disputed domain names were registered on the same date and target the same trademark via misspelling;
- (b) the registrants of both disputed domain names were initially masked by a privacy protection service or redacted for privacy; and
- (c) both disputed domain names have activated MX services, indicating they are likely used for sending and receiving fraudulent emails.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "Respondent") in a single proceeding.

## **6.3 Substantive Issues: Three Elements**

### **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 Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds 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 UMICORE mark 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.

The Panel finds the disputed domain name <eu-umcore.com> integrates Complainant's UMICORE mark entirely, with only minor modifications like omitting "i", adding "eu", and "-", alongside ".com". The addition of a hyphen and the acronym "eu" do not prevent confusing similarity in view of section 1.8 of the [WIPO Overview 3.0](#). The disputed domain name <umecore.com> differs from the trademark solely by substituting "i" with "e".

As both disputed domain names contain a misspelling of Complainant's UMICORE mark, the Panel finds the disputed domain names must be considered a prototypical example of typosquatting. Section 1.9 of the [WIPO Overview 3.0](#) states: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

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 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 Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

More specifically:

- (i) there has been no evidence adduced to show that Respondent is using the disputed domain names in connection with a bona fide offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the terms "umecore" and "umcore", the misspelling of Complainant's UMICORE trademark, in the disputed domain names. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the UMICORE or to apply for or use any domain name incorporating the UMICORE marks;
- (ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain names. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain names. Respondent registered the disputed domain names in 2023, long after the UMICORE marks (registered as a trademark since 2002) became widely known. The disputed domain names are confusingly similar to Complainant's UMICORE marks; and

(iii) there has been no evidence adduced to show that Respondent is making a legitimate noncommercial or fair use of the disputed domain names. By contrast, the disputed domain name <eu-umcore.com> has resolved to an inactive website, which does not represent any bona fide offering and given the composition of the disputed domain name, namely an inherently misleading misspelling of the Complainant's trademark coupled together with a geographic acronym, such disputed domain name is likely to mislead Internet users as to the disputed domain name's association with by the Complainant. The disputed domain name <umecore.com> resolved to a website offering to sell lighting products. It seems that Respondent is likely making profits through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); and *Pet Plan Ltd. v. 权中俊 and 李金梁 (Li Jin Liang)*, WIPO Case No. [D2020-3358](#).)

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 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.

In the present case, the Panel notes that Respondent has registered and used the disputed domain names in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Regarding the inactive disputed domain name, UDRP panels have found that the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the record, the Panel finds the non-use of the disputed domain name <eu-umcore.com> does not prevent a finding of bad faith in the circumstances of this proceeding. While panelists 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, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. [WIPO Overview 3.0](#), section 3.3. Having reviewed the record, the Panel notes the distinctiveness or reputation of Complainant's trademark, and the composition of the disputed domain name <eu-umcore.com>, and finds that in the circumstances of this case the passive holding of the disputed domain name <eu-umcore.com> does not prevent a finding of bad faith under the Policy.

Regarding the active disputed domain name (<umecore.com>), Respondent has used the website to which the disputed domain name resolves to purportedly offer for sale lighting products. Pursuant to paragraph 4(b)(iv) of the Policy, such use falls plainly within the non-exhaustive list of examples of registration and use in bad faith, namely using the confusingly similar disputed domain name with the intention to attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark. Having reviewed the record, the Panel finds Respondents' registrations and use of the disputed domain name <umecore.com> constitute bad faith under the Policy.

Based on the information provided by Complainant, the Panel finds that Complainant has a widespread reputation in the UMICORE marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant's trademark in mind at the time of the registration of the disputed domain names (in 2023). This has been reinforced by the fact that each disputed domain name incorporates the misspelling version of Complainant's UMICORE trademark.

Thus, the Panel concludes that Respondent has engaged in bad faith conduct with respect the disputed domain names.

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 names <eu-umcore.com> and <umecore.com> be transferred to Complainant.

*/Yijun Tian/*

**Yijun Tian**

Sole Panelist

Date: March 23, 2024