

## ADMINISTRATIVE PANEL DECISION

SCR-SIBELCO naamloze vennootschap v. wen bin miao  
Case No. D2024-0463

### 1. The Parties

The Complainant is SCR-SIBELCO naamloze vennootschap, Belgium, represented by Gevers Legal NV, Belgium.

The Respondent is wen bin miao, Cambodia.

### 2. The Domain Name and Registrar

The disputed domain name <sibelcosam.com> is registered with DropCatch.com LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 31, 2024. On February 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 1, 2024, 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 (REDACTED FOR GDPR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 2, 2024, 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 February 5, 2024.

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 February 8, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 28, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 1, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on March 7, 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**

The Complainant is a “global material solutions company” that was founded in 1872 and trades under the mark SIBELCO.

The Complainant owns a number of trade marks for SIBELCO including European Union trade mark No. 010388684, registered on April 20, 2012, in classes 1, 35, 37, 40 and 42.

The Complainant operates a website at “www.sibelco.com”.

The disputed domain name was registered on August 12, 2023.

As of October 24, 2023, the disputed domain name resolved to a website featuring pornographic images and links to gambling sites.

#### **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.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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.

Although the addition of other terms (here, “sam”) 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.

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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult 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 (although the burden of proof always remains on the complainant). 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 available 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 the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

As to paragraph 4(c)(i) of the Policy, the Respondent has used the disputed domain name for a pornography/gambling site with no obvious connection to the words in the disputed domain name but with the obvious potential to damage the reputation of the Complainant’s trade mark. Such use of the disputed domain name could not be described as bona fide.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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 Panel’s view, the Respondent set out to create a likelihood of confusion with the Complainant’s mark in accordance with paragraph 4(b)(iv) of the Policy.

In the absence of a plausible explanation from the Respondent as to why it has used the disputed domain name for pornography/gambling services that have no obvious connection with the disputed domain name, the Panel thinks it reasonable to conclude that most likely the Respondent was seeking to take unfair advantage by profiting from traffic intended for the Complainant.

The likelihood of confusion is not diminished by the probability that users arriving at the Respondent’s site will realise that the site is not connected with the Complainant. Paragraph 4(b)(iv) of the Policy is concerned with the intentional attracting of Internet users. Here, the disputed domain name creates a risk of implied

affiliation with the Complainant, and the Respondent profits from at least some of the traffic intended for the Complainant.

Furthermore, given that the disputed domain name is closely linked with the Complainant and its trade mark, the Respondent must have known that use of the disputed domain name for pornography/gambling was likely to damage the Complainant's reputation.

The Panel finds that the Complainant has established the third element 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 <sibelcosam.com> be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: March 21, 2024