



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

---

<b>Case No.</b>	<b>HK-1701022</b>
<b>Complainant:</b>	<b>Cummins Inc.</b>
<b>Respondent:</b>	<b>Tang Bingqian</b>
<b>Disputed Domain Name(s):</b>	<b>&lt; engine-cummins.com &gt;</b>

---

**1. The Parties and Contested Domain Name**

The Complainant is Cummins Inc., of 500 Jackson Street, Columbus, Indiana 47201, USA.

The Respondent is Tang Bingqian, of Longhua district Qinghu Building 1-710, Shenzhen, Guangdong 518109, CN.

The domain name at issue is <engine-cummins.com>, registered by Respondent with GoDaddy.com, LLC, of 14455 N. Hayden Rd., Ste. 226, Scottsdale, AZ 85260, USA.

**2. Procedural History**

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (ADNDRC) on 14 September 2017, in accordance with the Uniform Policy for Domain Name Dispute Resolution, approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules).

On September 14, 2017, the Hong Kong Office confirmed receipt of the Complaint, and then sent an email to GoDaddy.com LLC (the Registrar of the Domain Name) requesting verification in connection with the relevant information of the Domain Name at issue. On September 15, 2017, the Registrar of the Domain Name confirmed that the Respondent is Tang Bingqian and the Domain Name is registered with GoDaddy.com LLC.

On 21 September 2017, the Hong Kong Office sent the Respondent a written notice of complaint which involved a notification that a complaint concerning the Domain Name <engine-cummins.com> was submitted against the Respondent and a requirement to submit a Response within 20 days from 21 September 2017 (on or before 11 October 2017), and forwarded the Complaint (along with its Annexures) to the Respondent

pursuant to the Policy, Article 4 of the Rules and Article 6 of the ADNDRC Supplemental Rules. The formal date of the commencement of the administrative proceeding on was 21 September 2017.

On 12 October 2017, the Hong Kong Office confirmed that it did not receive a Response from the Respondent in respect of the Complaint concerning the Domain Name within the required period.

On 20 October 2017, the Hong Kong Office appointed Mr. Jonathan Agmon as the sole Panelist for this Domain Name dispute. And the appointment was accepted by Mr. Jonathan Agmon and the case files were transferred to the Panelist, on the same day.

### **3. Factual background**

The Complainant, Cummins Inc., was founded in 1919 and is listed on the New York Stock Exchange. The Complainant has been continuously using the CUMMINS trademark for its goods and services since its establishment.

The Complainant designs, manufactures, distributes and services diesel and natural gas engines. It is the world's largest independent engine manufacturer.

The Complainant is headquartered in Indiana, USA, provides services for consumers in over 190 countries and employs approximately 55,000 people worldwide.

The Complainant is listed among the Fortune 500 companies. The Complainant's total revenue in the years 2013 through 2016 exceed US\$17 billion annually.

In Asia, the Complainant is based in Beijing with operations that cover China, Hong Kong, Macau, Taiwan and Mongolia. In China, the Complainant has 15 manufacturing sites, over 8,000 employees and had over US\$3.7 billion in sales in the year 2011. The Complainant activities in china has gained wide media attention.

The disputed domain name was registered on 29 September 2014 and promotes the Complainant's products.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The Complainant is the owner of numerous trademark registrations for the mark CUMMINS in various designations, including in Asia.
- ii. The Complainant further argues that the disputed domain name has incorporated the word "cummins" in its entirety and it is confusingly similar to its CUMMINS trademark, and that it is clear that, the word "cummins" is the dominant and distinctive component of the disputed domain name.
- iii. The Complainant further argues that the overall impression conveyed by the disputed domain name is confusingly similar to the Complainant's CUMMINS

mark, and that Internet users will be misled to believe that the source and affiliation of the disputed domain name is related to the Complainant and/or its business.

- iv. The Complainant further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the Respondent has created and/or maintained the disputed domain name without the Complainant's consent, and that the Respondent is not related to the Complainant, nor was he authorized by the Complainant to use the disputed domain name or the CUMMINS trademark.
- v. The Complainant further argues that the Respondent has registered and is using the disputed domain name in bad faith, since the Respondent must have known about the Complainant's rights in the CUMMINS trademark long before the registration of the disputed domain name.

B. Respondent

The Respondent did not respond to the Complaint.

## 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

### A) Identical / Confusingly Similar

Pursuant to the Policy, paragraph 4(a)(i), a complainant must prove that a disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. In line with such requirement, a complainant must prove its trademark or service mark right and the similarity between the disputed domain name and its trademark or service mark.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant is the owner of numerous trademark registrations for the mark CUMMINS in various designations, including in Asia. For example: Chinese trademark registration No. 2020177 for CUMMINS in class 4, registered on 14 April 2004; Hong Kong trademark registration number 300989290 for CUMMINS in class 7, registered on 7 July 2008; and more.

The disputed domain name <engine-cummins.com> reproduces entirely the Complainant's CUMMINS trademark with the addition of the components "engine", "-“ and the gTLD suffix “.com”. The word “engine” is descriptive of the Complainant's products, i.e., diesel and natural gas engines. Also, a hyphen and the gTLD “.com” are without legal significance in the present case since the use of a TLD is technically required to operate a domain name.

Therefore, the addition of the terms "engine", "-" and the gTLD suffix ".com" does not have the capacity to distinguish the disputed domain name from the Complainant's CUMMINS registered trademarks and is disregarded when comparing the disputed domain names with the Complaint's trademarks. See Volkswagen AG v. Todd Garber, WIPO Case No. D2015-2175; Dassault (Groupe Industriel Marcel Dassault) v. Ma Xiaojuan, WIPO Case No. D2015-1733; Lego Juris A/S v. Chen Yong, WIPO Case No. D2009-1611; Dr. Ing. H.c. F. Porsche AG v. zhanglei, WIPO Case No. D2014-0080; Cummins Inc. v. DG Lanshan Mechanical Electrical Equipment Co., Ltd., ADNDRC Case No. HK-1000286

The Panel therefore finds that the disputed domain name <engine-cummins.com> is confusingly similar to the Complainant's registered marks. Accordingly, the Complainant has proven the element required by the Policy, paragraph 4(a)(i).

## **B) Rights and Legitimate Interests**

Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 2.1.

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Panel finds that the Complainant has established a prima facie case in this regard, inter alia, due to the fact that the Complainant has not licensed or otherwise permitted the Respondent to use the Complainant's trademarks or a variation thereof and the evidence presented indicates that the Respondent is not engaged in a bona fide offering of goods or services.

The Respondent has not submitted any substantive Response to the Complaint and did not provide any explanation or evidence to show any rights or legitimate interests in the disputed domain name sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

## **C) Bad Faith**

The Complainant must show that the Respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that shows that the Respondent registered the disputed domain name long after the Complainant registered its trademark. The Complainant has owned a registration for the CUMMINS trademark since the year 1940.

It is suggestive of the Respondent's bad faith in these particular circumstances that the trademark, owned by the Complainant, was registered long before the registration of the disputed domain name (*Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735).

In addition, the Complainant is also the owner of Chinese logo trademark registration

number 2020225  in class 4, registered on 14 April 2004 and Hong Kong trademark

registration number 19800137  in class 7, registered on 28 January 1980 and more. The Complainant registered logo trademarks comprise the word CUMMINS inside a C shaped design. The website the Respondent is operating under the disputed domain name redirects Internet users to a website offering for sale products of the Complainant while displaying the Complainant's registered logo trademarks. The use of the Complainant logo trademarks in this case using the red color which the Complainant is using on its official website would likely lead to consumer confusion. Internet users arriving at the Respondent's website operating under the disputed domain name are likely to be confused to think that the Respondent web site is authorized or belongs to the Complainant. Previous UDRP panels have found that "[a] likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site" (*Edmunds.com, Inc. v. Triple E Holdings Limited*, WIPO Case No. D2006-1095). To this end, prior UDRP panels have established that attracting Internet traffic by using a domain name that is identical or confusingly similar to a registered trademark may be evidence of bad faith under paragraph 4(b)(iv) of the Policy.

In addition, on the Website under the disputed domain name, the Respondent is pretending to be the agent of the Complainant. The Respondent is not commonly known by the CUMMINS name nor is he operating with the consent of the Complainant. This is evidence that the Respondent took the disputed domain name with knowledge of the Complainant and its trademarks. This is also evidence that the Respondent is using the disputed domain name to take advantage of the Complainant's registered trademarks and logo trademarks to attract Internet users to the Website under the disputed domain name for commercial gain. (*康明斯有限公司(Cummins Inc.) v. zhou xuesong*, ADNDRC Case No. CN-1100485; *Microchip Technology, Inc. v. Milos Krejcek and EDI Corporation, d/b/a Aprilog.com*, WIPO Case No. D2001-0337) Having regard to the evidence, the Panel finds that the disputed domain name was registered and is being used by the Respondent with knowledge of the Complainant and in bad faith with the intent to create an impression of an association with the Complainant and profit therefrom. The Respondent's actions therefore constitute bad faith. (*Herbalife International, Inc. v. Surinder S. Farmaha*, WIPO Case No. D2005-0765) stating that "the registration of a domain name with the knowledge of the complainant's trademark registration amounts to bad faith".

Based on the evidence that was presented to the Panel, including the Complainant's registered trademark, the use of the Complainant's trademark in the disputed domain name, the website operated under the disputed domain name, the use of the disputed domain name and the Respondent's failure to answer the Complaint, the Panel finds that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

**6. 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 <engine-cummins.com> be transferred to the Complainant.

---

Jonathan Agmon  
Panelist

Dated: November 2, 2017