



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400681
Complainant:	Cummins Inc.
Respondent:	Lidian Lidian
Disputed Domain Name:	<dscummins.com>

1. Introduction

This complaint (“the Complaint”) has been filed in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP). The Complainant has chosen the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) to administer the domain name proceedings that are referred to in the Complaint. The Complainant elected for this domain name dispute to be adjudicated by a sole panelist.

The domain name under contention before the Panel is <dscummins.com> (the Disputed Domain Name”). The Disputed Domain Name was registered with the Registrar GoDaddy.com LLC, of 14455 N. Hayden Rd, Ste. 226, Scottsdale, AZ 85260, USA, on 27 June 2012.

2. The Parties and Contested Domain Name

The Complainant is Cummins Inc., of 500 Jackson Street, Columbus, Indiana, United States of America. The Complainant’s authorized representative is Mayer Brown JSM of 16-19 Floor, Prince’s Building, 10 Charter Road, Central, Hong Kong.

The Respondent is Lidian Lidian, of Mao Jian Zhao Yang Tai Shan Yang Guang Ting Yuan, Shiyanshi, He Bei Sheng, 442013, China. The Respondent has no authorized representative, and in fact did not file a response in these proceedings.

3. Rules governing the Domain Name Dispute

The applicable rules that govern this domain name dispute are listed as follows:

- (a) Internet Corporation for Assigned Names and Numbers (“ICANN”) Uniform Domain Name Dispute Resolution Policy (“the Policy”)
- (b) The Rules for the UDRP (“the Rules”)

(c) ADNDRC Supplemental Rules for the Uniform Domain Name Dispute Resolution Policy (“the Supplemental Rules”)

The grounds that justify the Panel’s intervention and adjudication in this proceeding is set out in paragraph 4(a) of the Policy. Paragraph 4(a) provides:

“**Applicable Disputes.** You are required to submit to a mandatory administrative proceeding in the event that a third party (a “complainant”) asserts to the applicable Provider, in compliance with the Rules of Procedure, that

- (i) Your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) You have no rights or legitimate interests in respect of the domain name; and
- (iii) Your domain name has been registered and is being used in bad faith.”

In the administrative proceeding, the complainant must prove that each of these three elements are present.

The Policy is incorporated in GoDaddy.com LLC’s registration agreement.

4. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the “ADNDRC”) on 15 December 2014. The ADNDRC acknowledged receipt of the Complaint on 16 December 2014. The ADNDRC duly submitted a request for registrar verification in connection with the Disputed Domain Name on 16 December 2014. On 16 December 2014, the Registrar of the Disputed Domain Name responded to the ADNDRC, stating that (i) a copy of the Complaint had been received, (ii) the Disputed Domain Name was registered with it, (iii) the Respondent was the registrant, (iv) the Policy applied and (v) the language of the registration agreement for the Dispute Domain Name was English.

The ADNDRC duly verified that the Complaint had satisfied the formal requirements of ICANN, the Policy, the Rules, and the Supplemental Rules. Formal notification of the Complaint was sent to the Respondent on 29 December 2014. This proceeding commenced on 29 December 2014.

According to Article 5 of the Rules, the Respondent was required to file its response on or before 18 January 2015. The Respondent did not file a response within the required time period. On 19 January 2015 the ADNDRC notified the parties that the UDRP proceeding will proceed.

The ADNDRC appointed Dr. Stanley Lai, SC as the sole panelist for this matter on 23 January 2015. Dr. Stanley Lai, SC confirmed his availability to act as panelist and his ability to discharge his duties independently and impartially between the parties to this dispute.

The Panel was accordingly properly constituted in accordance with the Rules and the Supplemental Rules.

5. Complainant

The Complainant (formerly known as Cummins Engine Company Inc.) was founded in 1919. It carries out the business of designing, manufacturing, distributing and servicing diesel and natural gas engines and related technology, including fuel systems, controls, air handling, filtration, emission solutions and electrical power generation systems. The Complainant's headquarters are in Columbus, Indiana (USA). The Complaint annexed copies of the corporate information and annual reports about the Complainant's sizeable operations. In 2013 the Complainant's total net income was about US\$1.48b and its total revenue was US\$17.3b. The Complainant is listed on the New York Stock Exchange. It is the world's largest independent engine manufacturer.

The Complainant's operations in China are also sizeable. It established its office in Beijing in 1979. Currently the Complainant operates 26 facilities in mainland China, including 15 manufacturing sites. Some 8000 employees are employed in China. Sales in China exceeded US\$3.7b in 2011. Its operations currently extend to Hong Kong, Macau, Taiwan, Mongolia and other Asian countries.

The Complainant's China operations also extended into numerous joint ventures that were entered with leading Chinese companies (including Chongqing Machinery and Electrics Co Ltd, Dongfeng Automobile Co Ltd, Beiqi Foton Motor Co Ltd, Dongfeng Motor Parts & Components (Group) Co Ltd and Guangxi LiuGong Machinery Co Ltd), the first of which began in 1995.

6. Respondent

The Disputed Domain Name was registered by the Respondent on 27 June 2012. According to the Complaint, the Disputed Domain Name currently resolves to a website that is the company website of DS Industry Trade Co. Limited and which purports to sell CUMMINS branded products produced by the Complainant.

7. Parties' Contentions

The Complainant's contentions may be summarized as follows:


A. The Disputed Domain Name is Identical or Confusingly Similar to trade marks in which the Complainant has rights


i. Trade marks in which the Complainant has rights


The Complaint made reference to a substantial suite of trade marks that are owned by the Complainant. These include:


- China trademark "CUMMINS", registration number 2020177, class 4, registered on 14 April 2004;


- China trademark "CUMMINS", registration number 1691312, class 7, registered on 28 December 2001;
- China trademark "CUMMINS", registration number 266275, class 7, registered on 20 October 2006;
- China trademark "CUMMINS", registration number 4897520, class 39, registered on 14 March 2009;
- China trademark "CUMMINS", registration number 275567, classes 12 and 19, registered on 21 January 2007;
- China trademark "CUMMINS", registration number 6539932, class 7, registered on 7 September 2012;
- China trademark "CUMMINS", registration number 2000443, class 25, registered on 7 August 2006;


- China trademark """, registration number 2020225, class 4, registered on 14 April 2004;


- China trademark """, registration number 6539933, class 8, registered on 14 March 2014;

- China trademark """, registration number 9620873, class 8, registered on 7 April 2014;



- China trademark """, registration number 776345, class 37, registered on 21 January 1995;

- China trademark """, registration number 4897518, class 39, registered on 7 March 2009;

- China trademark """, registration number 146672, class 12, registered on 15 May 2011;

- China trademark """, registration number 9258552, class 17, registered on 7 April 2012;

- China trademark "", registration number 1669792, class 7, registered on 21 November 2001;
- China trademark "", registration number 6539931, class 7, registered on 7 September 2012;
- China trademark "", registration number 2000445, class 25, registered on 9 October 2001;
- Hong Kong trademark "CUMMINS", registration number 300989290, class 7, registered on 7 July 2008;
- Hong Kong trademark "CUMMINS", registration number 19690325AA, classes 7 and 12, registered on 11 March 1969;
- Hong Kong trademark "", registration number 19800137, class 7, registered on 28 January 1980;
- Hong Kong trademark "", registration number 19800138, class 12, registered on 28 January 1980;
- Taiwan trademark "CUMMINS", registration number 1068681, class 7, registered on 1 December 2003;
- Taiwan trademark "CUMMINS", registration number 180007, class 37, registered on 16 April 2003;
- Taiwan trademark "CUMMINS", registration number 1013165, class 12, registered on 1 September 2002;
- Taiwan trademark "CUMMINS", registration number 16922, class 18, registered on 1 January 1964;
- Taiwan trademark "", registration number 1068682, class 7, registered on 1 December 2003;
- Taiwan trademark "", registration number 324801, class 90, registered on 2 May 2006;

- Taiwan trademark ", registration number 1013166, class 12, registered on 1 September 2002;
- Taiwan trademark ", registration number 180008, class 37, registered on 16 April 2003.

Copies of registration/extracts from official trade mark databases were annexed to the complaint.

The Panel was also referred to articles about the Complainant and its business operations that were published before the submission of the Complaint (Annexure 5 to the Complaint). The year of the Complainant's first use of the brand CUMMINS was reportedly 1919. The Complaint also annexed print outs of search results from major internet search engines (such as Google, Baidu and Yahoo!) which showed how the vast majority of search results showed that CUMMINS related to the Complainant's business operations. The submission was made that over time, the CUMMINS trade marks have also acquired distinctiveness through extensive use in commerce. This recognition was also the culmination of extensive promotion, publicity and advertising of CUMMINS related products and services on the internet, trade press and other print media.

ii. The Disputed Domain Name is identical or confusingly similar to the Complainant's trade marks

The Complainant submitted that the Disputed Domain Name incorporates the Complainant's CUMMINS Trade Mark in its entirety. The only difference is the inclusion of the prefix "ds". It was submitted that the inclusion of "ds" was not sufficient to negate the confusing similarity between the Disputed Domain Name and the trade marks. It was submitted that confusion would inevitably be occasioned by the Disputed Domain Name leading others to believe that the domain name had been registered by or is otherwise affiliated with the Complainant. The Complainant also submitted that the website to which the Disputed Domain Name resolves uses the CUMMINS Trade Marks and purports to sell products produced by the Complainant.

The Complainant also submitted that in another panel decision, *Cummins Inc. v DG Lanshan Mechanical Electrical Equipment Co Ltd* ADNDRC Case No. HK-1000286, it was held that the letters "dg" in the domain name <dgcummins.com> "bears no distinctiveness" to negate any confusing similarity between the Disputed Domain Name and the Complainant's trade marks in that proceeding.

The Complainant also reminded the Panel that in making an enquiry as to whether or not a trade mark is identical or confusingly similar, the suffix ".com" was to be disregarded (*Rohde & Schwarz GmbH & Co KG v Perthshire Marketing Ltd* WIPO Case No. D2006-0762).

B. The Respondent has no rights or legitimate interest in the Disputed Domain Name

In arguing that the Respondent has no rights or legitimate interest in the Disputed Domain Name the Complainant raised several contentions which may be summarized as follows:

- (a) The Respondent registered the Disputed Domain Name on 27 June 2012, 93 years after the first use of the CUMMINS Trade Mark, and 72 years after it was first registered by the Complainant.
- (b) The Disputed Domain Name was registered without the Complainant's consent.
- (c) There is no evidence to suggest that the Respondent has been commonly known by the Disputed Domain Name.
- (d) Neither registrant's name (Lidian Lidian) nor his business name, (DS Industry Co. Ltd) correspond to the Disputed Domain Name. There is no justification or apparent need for the Respondent to use CUMMINS in the Disputed Domain Name.
- (e) The Respondent does not own any trade mark registrations that reflect the dispute domain name in China (where the Respondent is allegedly domiciled).
- (f) The website to which the Disputed Domain Name resolves purports to sell the Complainant's products. However the Respondent is not an authorised distributor, reseller or partner of the Complainant.
- (g) From the listing of CUMMINS branded products, and displays of the CUMMINS Logo (registered by the Complainant as a trade mark), the Respondent is clearly aware of the Complainant and the CUMMINS trade marks.
- (h) The Respondent used the Disputed Domain Name in order to take advantage of the confusing similarity between the CUMMINS Trade Marks and the Disputed Domain Name, to attract and redirect internet users to the Respondent's website for commercial gain. This cannot provide the Registrant with a right or legitimate interest in the Disputed Domain Name.
- (i) The Respondent is not an authorized reseller of the Complainant's products.
- (j) The Complainant has never authorized the Respondent to use its CUMMINS Trade Marks in the Disputed Domain Name or otherwise, and has never had any dealings with the Respondent which could give rise to such rights.

The Complainant also submitted that the Respondent has taken unfair advantage of the Complainant and its rights so as to unfairly capitalize on the Complainant's goodwill and reputation, which does not give rise to any right or legitimate interest in the Disputed Domain Name. In particular:

- (a) The Respondent does not only offer the Complainant's products for sale. Other products are sold, but the reference to CUMMINS is to bait users into contacting the Respondent and purchasing products of other brands.
- (b) The reference in the Respondent's website to it being "a professional supplier of Cummins engine parts in China" implies an authorized distributorship.
- (c) There is no disclaimer present in the website that the Respondent is not endorsed by nor affiliated with the Complainant.
- (d) The Respondent incorporated images on its website that were obtained from the Complainant's own websites (including the images of the Complainant's own products).
- (e) The respondent has also registered other iterations of domain names that contain CUMMINS, e.g. <hydfcummins.com>. The Respondent's email 1240311698@qq.com corresponds to some 1,980 other domain names in total. Many of these domain names also correspond to other well-known brands.

C. No Bona Fide Offering of Services/Use of the Disputed Domain Name is in Bad Faith

The Complainant contended that the Disputed Domain Name has been registered and is being used by the Respondent in bad faith. In support of this contention, the following arguments were made:

- (a) The Respondent has no rights or legitimate interests in the Disputed Domain Name and this is itself evidence of bad faith.
- (b) The Disputed Domain Name does not correspond to the Respondent's name or business name.
- (c) Due to the world-wide fame of the Complainant's trade marks, it is inconceivable that the Respondent was not aware of CUMMINS trade mark at the time the Disputed Domain Name was registered by the Respondent. This is especially so given that the Respondent is in the same industry as the Complainant (manufacturing and selling engines and parts for commercial vehicles).
- (d) The Respondent's website misrepresents that it is "a professional of Cummins engine parts". This was done to increase the number of internet users that access the website for commercial gain.
- (e) The use of the Disputed Domain Name to sell the Complainant's brand of products.
- (f) The false representation of a professional relationship between the Respondent and the Complainant amounts to bad faith.

(g) The continued use of the Disputed Domain Name in full knowledge of the Complainant's prior rights in CUMMINS gives rise to bad faith.

(h) The Disputed Domain Name is likely to mislead users into believing that the Respondent is the Complainant's partner or distributor in China.


8. Findings of the Panel

No response having been received from the Respondent within the time specified or at all, the Panel has proceeded to consider the merits of the Complaint as filed.

The Panel concludes that the Complainant has sufficiently made its case to warrant a transfer of the Disputed Domain Name from the Respondent to the Complainant.

A) The Complainant's Rights have been established

The Panel recognizes the plethora of trade mark registrations that are owned by the

Complainant apropos the CUMMINS Trade Mark and logo . The evidence that was tendered in support of the Complaint is also recognized insofar as it establishes, for the purpose of this proceeding, the well-known status of the CUMMINS Trade Mark as well as the strength of unregistered rights in the CUMMINS name that have accrued from first use in 1919.

The Panel also recognizes that the Disputed Domain Name is confusingly similar to the Complainant's CUMMINS Trade Mark. In reaching this finding, the Panel recognizes that the insertion of the letters "ds" to the Disputed Domain Name does not bear any distinctiveness to sufficiently distinguish the Disputed Domain Name from the trade marks that are owned by the Complainant. In reaching this position, the Panel relies on the finding in the decision *Cummins Inc. v DG Lanshan Mechanical Electrical Equipment Co Ltd*, ADNDRC Case No. HK-1000286, where the same finding was made in relation to the prefix "dg" in the domain name <dgcummins.com> that was in contention in that case.

B) The Respondent can claim no rights or legitimate interest in the Disputed Domain Name

The fame of the Complainant's trade marks and their long use dating back to 1919, which predates the first entry of <dscummins.com>, effectively shifts the onus to the Respondent to establish the latter's rights and/or legitimate interests in the Disputed Domain Name (*PepsiCo Inc v Amilcar Perez Lista d/b/a Cybersor*, WIPO case No D2003-0174). No response having been filed by the Respondent, the Panel finds that the Respondent can claim no rights and/or legitimate interest in the Disputed Domain Name. The Respondent could have filed evidence of its own rights to "dscummins" whether in the form of registered trade marks or otherwise, yet this was not done.

The Complainant made other assertions, which in the view of the Panel further reinforce the absence of any legitimate claim to rights or interest that can be made by the Respondent (going beyond the fact that it did not file a case).

The Disputed Domain Name resolves to a website purportedly selling CUMMINS products that are produced by the Complainant. A screen shot of the website as at 15 December 2014 is reproduced as follows:



The Panel agrees with the Complainant that the following observations can be made:

- (a) The Complainant’s trade marks/logos have been displayed without authorization or consent.
- (b) The website claims to deal with CUMMINS engines and parts which are produced by the Complainant.
- (c) The website claims to be a “professional supplier of Cummins engine parts in China.”

It appeared that the Respondent was involved in sales and maintained an e-commerce platform through its website.

The Respondent did not refute the Complainant’s assertion that the Disputed Domain Name was used in relation to the website (above) to unfairly take advantage of the confusing similarity between the CUMMINS Trade Marks and the Disputed Domain Name. This carried the effect of attracting and redirecting internet users to the website for commercial gain. In the absence of any credible explanation by the Respondent, this cannot provide the Registrant with a right or legitimate interest in the Disputed Domain Name (*Cummins Inc. v DG Lanshan Mechanical Electrical Equipment Co Ltd* ADNDRC Case No. HK-1000286).

Similarly, illegal use of another’s trade marks would not constitute a bona fide offering of goods or services (*Viacom International, Inc., Paramount Pictures Corporation, and Blockbuster Inc. v. TVdot.net, Inc. f/k/a Affinity Multimedia* WIPO Case No. D2000-1253).

In the premises, and again without credible explanation or claimed defence (such as parallel importation), the Respondent will not be able to claim to any rights or legitimate interest in the Disputed Domain Name.

C) Bad Faith

The Panel also finds that the Domain Name has been registered and is being used by the Respondent in bad faith.

The absence of a credible response meant that the absence of any rights and/or legitimate interests that the Respondent could lay claim to was itself evidence of bad faith.

The absence of a response in this case meant that the Panel could not consider any countervailing evidence to refute the claim by the Complainant to the well-known status of its trade marks. This carries certain consequences for the Respondent. WIPO Panel decisions have previously established the principle that the registration of a domain name that is confusingly similar to a famous trade mark by any entity that does not have a relationship to that mark is itself sufficient evidence of bad faith: see *Veuve Clicquot Ponsardin Maison Fondée en 1772 v The Polygenix Group Co* WIPO Case No. D2000-0163. The absence of filing a response in this case means that a case for bad faith is established on the basis of the (unrefuted) fame of the Complainant's trade marks, taken together with the obvious absence of any business connection and the continued conduct of the Respondent in full knowledge of the Complainant's rights.

The Panel also notes that the Registrant's own name or business bore no resemblance to the Disputed Domain Name, and in the absence of any credible explanation to the contrary, the website which operated under the Disputed Domain Name was clearly directed at intended users and purchasers of the Complainant's products who would perceive a business relationship in terms of partnership or authorized distributorship. It is reasonable to infer, in the absence of any credible or any other explanation provided by the Respondent that the registration and continued use of the Disputed Domain Name was done to mislead internet users to perceive a legitimate business association (*Croatia Airlines d.d. v Modern Empire Internet Ltd*, WIPO Case No. D2003-0455).

A highly relevant panel decision was *Cummins Inc. v ning lee* ADNDRC CN-1200540, which involved the domain name <sdcummins.net>. The Panel in this case held that the use by the respondent of <sdcummins.net> to sell the Complainant's branded products and use of words such as "Service Centre" implied that the respondent had a relationship with the Complainant, which was false and misleading and therefore amounted to bad faith registration and use. Reference should also be made to another panel decision that involved the Complainant, *Cummins Inc. v DG Lanshan Mechanical Electrical Equipment Co Ltd* ADNDRC Case No. HK-1000286. In this case the respondent had been using the domain name <dgcummins.com> to offer CUMMINS branded products and other goods that competed with the Complainant's business, and the panel found that the respondent must have "knowingly incorporated the Complainant's trade mark in order to attract Internet users by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of respondent's website with the intent of commercial gain." These cases are highly apposite to the current dispute.

The Complaint also referred to the Respondent's direct or indirect registration of the domain name <hydfcummins.com>, due to the common email address (1240311698@qq.com) that was used to register this and some other 2,002 domain names. In the absence of any credible explanation by the Respondent, the Panel finds great difficulty to reach any conclusion other than that the Respondent appeared to be registering domain names aplenty, many of which referred to well-known brands, in order to mislead the public.

No response having been received from the Respondent by the stipulated deadline, or at all, the Panel finds that the Complainant has satisfied all 3 grounds of paragraph 4(a) of the Policy.

9. Decision

For the reasons stated above, the Panel is duly satisfied that the Complainant has sufficiently fulfilled the trinity of requirements as stated in paragraph 4(a) of the Policy.

The Disputed Domain Name <dscummins.com> is to be transferred to the Complainant.



Dr. Stanley Lai SC
Sole Panelist

Dated: 6 February 2015