

ADMINISTRATIVE PANEL DECISION

Cummins Inc. v. 尹树潮 (Yin Shu Chao)

Case No. D2023-1795

1. The Parties

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

The Respondent is 尹树潮 (Yin Shu Chao), China.

2. The Domain Name and Registrar

The disputed domain name <autocummins.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 21, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 24, 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 in English on April 27, 2023.

On April 24, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 27, 2023, the Complainant requested that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 in English and Chinese of the Complaint, and the proceedings commenced on May 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 22, 2023. No formal Response was received.

However, on May 5 and May 6, 2023, the Center received two email communications from a third party named Shiyang Pushi Industry and Trade Co., Ltd (“Shiyang Pushi”), in which it claimed to be the owner of the disputed domain name and expressed a wish to settle the dispute. Subsequently, from May 11 to May 25, 2023, the Center received four email communications from the Respondent’s contact email address requesting a standard settlement form and requesting that the dispute proceed against Shiyang Pushi if necessary. On May 17, 2023, an email communication was received from the Complainant in which it declined to negotiate a settlement. Accordingly, the Center notified the Commencement of Panel Appointment Process on May 24, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on June 7, 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 Complainant was founded in 1919 as Cummins Engine Company, Inc. and produces diesel and natural gas engines and related technologies. It serves customers throughout the world, including China. Specifically, it established an office in Beijing in 1979, formed its first Chinese joint venture in 1995, and now has 26 facilities, including 15 manufacturing sites, in China. The Complainant holds multiple trademark registrations in multiple jurisdictions, including the following:

- United States trademark registration number 0579346 for CUMMINS, registered on September 1, 1953; specifying goods in class 7;
- Chinese trademark registration number 266275 for CUMMINS, registered on October 20, 1986, specifying goods in class 7;
- Chinese trademark registration number 275567 for CUMMINS, registered on January 20, 1987, specifying goods in class 12;
- Chinese trademark registration number 146672 for a figurative mark featuring the name “Cummins” (the “Cummins logo”), registered on May 15, 1981, specifying goods in class 12; and
- Chinese trademark registration number 157527 for the Cummins logo, registered on May 15, 1982, specifying goods in class 7.

The above trademark registrations are current. The Complainant’s affiliated companies have also registered the domain names <cummins.com> and <cummins.com.cn>, registered in 1990 and 2003, respectively, that are used in connection with the Complainant’s global and Chinese websites, respectively, which present information about the Complainant’s various business segments and products. The websites, particularly the Chinese website, prominently display the Cummins logo.

The Respondent is a website developer based in China.

The disputed domain name was registered on March 9, 2020. It formerly resolved to a website in English for “Pushi Diesel Parts” operated by Shiyang Pushi. The site offered for sale various brands of engines, pumps and spare parts for buses, trucks, construction machinery, generator sets, and marine vessels. The website prominently displayed three brands, one of which was Cummins, represented by the Cummins logo. The website text stated that the operator carried “genuine Cummins products” and that its product catalog “covers all series of the best selling Cummins parts”. It also stated that Shiyang Pushi manufactured and distributed five other brands of excavator parts. At the time of this Decision, the disputed domain name no longer resolves to any active website; rather, it is passively held.

Shiyan Pushi is a company founded in 1988 in Shiyan City, Hubei Province, China. Shiyan Pushi claims to be the owner of the disputed domain name registration. It holds a Chinese business license dated September 15, 2021 that indicates its activities include import/export and wholesale of auto parts. It submits that it mainly makes sub-factory accessories, including those of the Complainant. It submits photographs of two of its products showing that they do not display the Complainant's mark.

5. Parties' Contentions

A. Complainant

The disputed domain name is confusingly similar to the Complainant's CUMMINS trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed, consented to or otherwise authorized the Respondent to use any of the CUMMINS trademarks for the disputed domain name or for any reason whatsoever, nor is the Respondent an authorized representative or partner of the Complainant. The website associated with the disputed domain name offers products for sale that overlap with the Complainant's core business. The Respondent has not been commonly known as "Cummins".

The disputed domain name was registered and is being used in bad faith. The website associated with the disputed domain name was clearly used with the intention to confuse users into believing that it is related to the Complainant, or is otherwise authorized by the Complainant to offer machinery and equipment, which overlaps with the Complainant's core business, and may mislead Internet users into believing that it is endorsed by or affiliated with the Complainant.

B. Respondent

In his informal email communications, the Respondent submitted that he was not the actual owner of the disputed domain name but had registered it for Shiyan Pushi, which no longer uses it.

6. Discussion and Findings

6.1 Preliminary Issues

A. Identity of the Respondent and Consent to Transfer

Paragraph 1 of the Rules defines the respondent as "the holder of a domain name registration against which a complaint is initiated". In this case, the Registrar verified that the party who holds the disputed domain name registration is 尹树潮 (Yin Shu Chao), following which the Complaint was amended to initiate this dispute against that same party. Accordingly, the Panel finds that 尹树潮 (Yin Shu Chao) is a proper Respondent in this proceeding and refers to him in this Decision as "the Respondent".

In his informal email communications, the Respondent asked that the proceeding continue against his client Shiyan Pushi, if necessary. He denies that he is the actual owner of the disputed domain name and submits that he developed the website associated with it for Shiyan Pushi. Given that the Panel lacks evidence regarding the relationship between the Respondent and Shiyan Pushi and that the amended Complaint did not add a second respondent, the Panel declines to consider Shiyan Pushi a respondent, but will take into account the evidence regarding its use of the disputed domain name.

The Respondent and Shiyan Pushi proposed to settle the dispute and indicated a willingness to consent to a transfer. However, the Complainant did not agree to settle, and Shiyan Pushi also in effect denied bad faith. Therefore, the Panel will consider the substantive elements of the Policy in order to reach its decision.

B. Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain name resolves to a website in English, which suggests that the Respondent is clearly able to understand and communicate in English; whereas the Complainant is less familiar with Chinese. Translation of the Complaint and its annexes into Chinese would incur substantial time and cost and may delay the proceeding.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and the amended Complaint were filed in English. Although the Respondent and his client communicated with the Center in Chinese, the website associated with the disputed domain name is in English, from which it is reasonable to infer that they understand that language. Further, rather than seeking to reply in detail to the Complainant’s contentions, they sought to settle the dispute and did not comment on the language of the proceeding. The Panel is able to take into account their email communications as sent in Chinese, and the amended Complaint as filed in English. Therefore, the Panel considers that requiring either Party to translate its submission or communications would create an undue burden and delay.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English but that the Panel will accept the informal email communications received in Chinese without translation.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

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

The burden of proof of each element is borne by the Complainant.

A. Identical or Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights in the CUMMINS mark.

The disputed domain name wholly incorporates the CUMMINS mark. It adds the word “auto” but this addition does not prevent a finding of confusing similarity because the CUMMINS mark remains clearly recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 1.8.

The only other element in the disputed domain name is the generic Top-Level Domain (“gTLD”) “.com”. As a mere standard requirement of domain name registration, this element may be disregarded unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent’s] use of, or 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; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] 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.

With respect to the first and third circumstances set out above, the disputed domain name, which wholly incorporates the CUMMINS trademark, was formerly used to resolve to a website that prominently displayed the Complainant’s Cummins logo and offered for sale what were purported to be the Complainant’s products. The Complainant submits that it has not licensed, consented to, or otherwise authorized the Respondent to use any of the CUMMINS trademarks for the disputed domain name or for any reason whatsoever, nor is the Respondent an authorized representative or partner of the Complainant. The website not only offered the Complainant’s products but also products of other brands. These circumstances indicate that the Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods and services. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), and [WIPO Overview 3.0](#), section 2.8.1. Further, as a commercial website, this is not a legitimate noncommercial or fair use of the disputed domain name.

With respect to the second circumstance set out above, the Respondent’s name, as verified by the Registrar, is “尹树潮 (Yin Shu Chao)”, and the disputed domain name is being used by a company named “Shiyan Pushi Industry and Trade Co., Ltd”, neither of which resembles the disputed domain name. Nothing indicates that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The user of the disputed domain name, Shiyan Pushi, submitted evidence showing that two of its products and their packaging did not bear the CUMMINS name or logo. However, this does not overcome the fact that the disputed domain name wholly incorporates the CUMMINS mark to attract Internet users, and the associated website uses the CUMMINS mark and logo to offer what are purported to be “genuine Cummins products” while at the same time offering products of other brands. In view of these circumstances, the Panel finds that the Complainant’s *prima facie* case has not been rebutted.

Therefore, based on the record of this proceeding, the Complainant has satisfied the second element in paragraph 4(a) of the Policy

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The fourth circumstance is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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.

As regards registration, the disputed domain name was registered in 2020, many years after the Complainant registered its CUMMINS mark and Cummins logo, including in China, where the Respondent is based. The disputed domain name wholly incorporates the CUMMINS mark, which it combines with the word "auto", which indicates an awareness of the nature of the Complainant's business. The associated website for Shiyan Pushi displayed the CUMMINS mark and the Cummins logo and offered for sale what were purported to be the Complainant's products. The Respondent submits that he built this website for Shiyan Pushi, which asserts that they did not know the disputed domain name infringed the Complainant's rights at the time of registration. However, in view of the content of the website, that assertion is not credible. In these circumstances, the Panel finds that the Respondent had the Complainant and its CUMMINS mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name resolves to a website that offers for sale what are purported to be the products of the Complainant as well as other brands. Given these circumstances and the findings in Section 6.2B above, the Panel finds that this use of the disputed domain names intentionally attempts to attract, for commercial gain, Internet users to the website associated with the disputed domain name by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of that website and of the products on it as set out in paragraph 4(b)(iv) of the Policy.

The Respondent submits that Shiyan Pushi no longer uses the disputed domain name. Indeed, the disputed domain name has ceased to resolve to an active website since the Respondent received notice of this dispute. However, this change in use does not alter the Panel's conclusion; if anything, it may be further evidence of bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 <autocummins.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: June 21, 2023