

## **ADMINISTRATIVE PANEL DECISION**

Arm Limited v. Harrison Canning, HTC Enterprises  
Case No. D2022-1129

### **1. The Parties**

The Complainant is Arm Limited, United Kingdom, represented by Quinn IP Law, United States of America (“United States”).

The Respondent is Harrison Canning, HTC Enterprises, United States.

### **2. The Domain Name and Registrar**

The disputed domain name <cortexcomputer.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 1, 2022. On April 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 4, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 5, 2022, 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 on April 11, 2022.

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 April 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2022. The Respondent filed a Response on April 12, 2022. On April 21, 2022, a Notification of Suspension was sent to the Parties. On May 30, 2022, a Notification of Extension to Suspension was sent to the Parties. On July 6, 2022, the proceeding was reinstated and the notice of Commencement of Panel Appointment was sent on July 21, 2022.

The Center appointed Andrew F. Christie as the sole panelist in this matter on August 5, 2022. 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.

On August 13, 2022, the Center received a Supplemental Filing from the Complainant. On August 15, 2022, the Center received an email from the Respondent, responding to the Complainant's Supplemental Filing.

#### **4. Factual Background**

The Complainant has provided technology-related goods and services since 1990. It designs sophisticated electronic products, including computer processors, graphics processors, digital memories and peripheral hardware; supplies software and development tools for computer hardware; and provides software and consultancy services. The Complainant has sold over 200 billion products under its ARM brand, and its products and services reach over 70 percent of the world's population. The Complainant's processors, marketed under the CORTEX trademark, are used as the main Central Processing Unit ("CPU") for most mobile telephones. The Complainant also provides the CPU for many other widely used devices, including laptops, tablets, televisions, and other electronic products.

The Complainant owns numerous trademark registrations worldwide for the word trademark CORTEX, including in the United States, where the Respondent lives and is employed. These include United States Trademark Registration No. 3336098 (registered on November 13, 2007) for the word trademark CORTEX, in respect of a range of goods and services concerning computer hardware and computer software.

The Complainant owns several domain names that incorporate the CORTEX trademark, including <armcortex.com> and <cortex-a.com>.

The disputed domain name was registered on June 3, 2018. The Complainant has provided a screenshot, taken on March 31, 2022, showing that it resolved to a GoDaddy webpage stating "This domain is registered, but may still be available. If you're interested, try our Domain Broker service." At the time of this decision, the disputed domain name resolves to a GoDaddy parking page stating "cortexcomputer.com is not available" followed by links to various GoDaddy resources.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant made the following contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The disputed domain name incorporates the Complainant's CORTEX trademark in its entirety, and includes the term "computer", which is a well-known and widely used term for electronic devices, and a term commonly used by the Complainant in relation to its products and solutions. At the time of registration of the disputed domain name, the Respondent knew, or should have known, of the Complainant's well-known status as a global innovator in the computer and electronics industries, its rights in the CORTEX trademark, and its frequent use of, and association with, the term "computer" in relation to its goods and services. The disputed domain name contains no additional terms to distinguish itself in any way from the Complainant and its registered CORTEX trademark, and the addition of the term "computer" is insufficient to distinguish the disputed domain name from the Complainant's registered trademark. Consequently, the public are likely to be confused into believing that the disputed domain name belongs to the Complainant and not the Respondent. Numerous decisions under the Policy have found that the Complainant has valid rights in the CORTEX trademark, based upon its use and registration in a number of jurisdictions, which commenced many years prior to the registration of the disputed domain name.

The Complainant made the following contentions to establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On information and belief, prior to the initiation of this proceeding, and since registration of the disputed domain name on June 3, 2018, the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent does not have any trademark registrations for the trademark CORTEX or the disputed domain name, and is not commonly known as “cortex”. The Respondent is not affiliated with or licensed by the Complainant. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert the public or to tarnish the Complainant’s CORTEX trademark. The disputed domain name incorporates the Complainant’s CORTEX trademark in its entirety, along with the word “computer”, which is commonly associated with the Complainant and its goods and services, and which makes the disputed domain name ripe for potential malicious use against the Complainant and the Complainant’s customers and vendors.

The Complainant made the following contentions to establish that the disputed domain name was registered and is being used in bad faith. The Respondent’s contact information is not available through Whois or presented on content at the location to which the disputed domain name resolves, and the Registrant’s identity and contact details are screened by a privacy registration service. The Complainant sent a demand letter to the Registrar of the disputed domain name on March 17, 2022, to which the Respondent did not respond. The Respondent has no legitimate reason to have registered a domain name incorporating in full the Complainant’s CORTEX trademark, except to attempt to capitalize on the enormous goodwill and marketplace recognition associated with the Complainant’s trademark, and to prevent the Complainant from being able to register the disputed domain name itself. The Respondent is clearly using the disputed domain name for commercial gain. The Respondent’s registration of the disputed domain name in 2018 does not predate the Complainant’s use of its CORTEX trademark, first registered in 2004. The Respondent could have ascertained the existence of the Complainant with a simple Internet search. The Respondent’s registration of the disputed domain name is consistent with establishing a parked domain for potential phishing or pharming attacks. The public is likely to be confused, misled and deceived as to the source of the disputed domain name, and is likely to be misdirected away from the Complainant when, in fact, the public is actually searching for the Complainant. The Respondent’s current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding.

## **B. Respondent**

The Respondent sent an email to the Center on April 12, 2022, addressed to “all involved parties”, in which he made the following statements.

The term “cortex” is a common term that has been used for hundreds of years in the field of neuroscience to refer to the outermost layer of the brain, and the Complainant should be unable to enforce a trademark registration of a common term in biology. The Complainant includes a screenshot of a search for “cortex processor” and not “cortex computer”, because the latter does not yield results related to the Complainant’s products.

The Respondent graduated on May 7, 2022, with a degree in neurotechnology studies after four years of study. He works in the neurotechnology/brain-computer interfacing industry, as evidenced by his websites, his social media, the talks he has given, and the articles about him (to which he provided links). The interaction between brain regions, namely the cortex, and computers is a central part of this field. The Respondent registered the disputed domain name in 2018 because he was considering creating a brain-sensing headset under that name, once he completed his studies. He owns about 20 other domain names, all of which are related to neurotechnology, and the Complainant will find no instance where a reasonable person could conclude that he has registered any domain name with malintent.

Despite the disputed domain name being of apparent concern to the Complainant, it has failed to respond to the Respondent’s registration of it for four years, and it has failed to notice that he also owns the domain names <computercortex.com> and <cortexcomputerinterface.com>. The Respondent’s ownership of these domain names shows that his intent is related to neurotechnology use and not to the development of

microprocessors. The brain is often touted as a biological computer, and it is under this meaning that the Respondent registered the disputed domain name.

The Complainant has not proven it has suffered any damage from the Respondent's registration of the disputed domain name, which is why it has claimed that his ownership of it is consistent with a phishing scam. However, the disputed domain name has not been used in the four years since its registration, and so no phishing argument can be made. The Respondent was unaware of the Complainant's CORTEX product line until he received notice of this dispute, which is because he is not in the microprocessor industry. He did not respond to the Complainant's first message because he questioned the legitimacy of the claim.

The Complainant has filed this complaint in bad faith, in a predatory attempt to wrongfully cause the Respondent to hand over his property. If the Complainant is intent on obtaining the disputed domain name, it may submit a financial offer to the Respondent, which he will consider if the proposed value exceeds the personal value that he assigns to it, even though soliciting commercial gain from the Complainant was never the Respondent's intent.

### **C. Complainant's Supplemental Filing**

The Complainant filed a Supplemental Filing on August 13, 2022, contending that it contains facts and evidence that is material and relevant to this administrative proceeding which could not reasonably have been included by the Complainant at the time of filing of the Complaint. The Supplemental Filing contained the following contentions.

The Respondent acknowledges that he has not used or made any *bona fide* effort to use the disputed domain name, and this is further evidence of the Respondent's lack of rights and legitimate interests in respect of the disputed domain name. None of the information presented by the Respondent at the web links contained in the Respondent's Response uses the phrase "cortex computer" or the words "cortex" and "computer".

On May 21, 2022, the Complainant's representative offered to pay the Respondent USD 1,000 to acquire the disputed domain name, and a further USD 1,000 each for the domain names <computercortex.com> and <cortexcomputerinterface.com>, being sums that would reimburse the Respondent's out-of-pocket costs incurred in registering and maintaining the domain names since registration. The Respondent, on May 28, 2022, admitted that USD 3,000 covered the costs of registering and maintaining the three domain names, but demanded USD 20,000 for settlement of the dispute and for transfer of the disputed domain name, and a combined additional USD 30,000 for transfer of the other two domain names. The Respondent failed to provide documentation of his expenses to substantiate the USD 20,000 demand, and this is clear evidence of both the Respondent's lack of legitimate interests in the disputed domain name, and of the Respondent's bad faith registration and use of the disputed domain name.

### **D. Respondent's Supplemental Filing**

In response to the Complainant's Supplemental Filing, the Respondent sent an email to the Center on August 15, 2022, objecting to its inclusion in the case, on the basis that it is an attempt to delay the proceeding, and is a bad faith tactic to delay his ability to use the disputed domain name. The Respondent also included a response to the Complainant's Supplemental Filing, should it be accepted. That response contained the following statements.

The Respondent works in the neurotechnology/neuroscience industry, in which the word "cortex" is a common term referring to the top layer of the brain. His professional career within neurotechnology predominantly focusses on devices called brain-computer interfaces. It has been his plan to create a company in which the term "cortex-computer interface" will be used to describe a product. Thus, his ownership of the disputed domain name is legitimate. There is clear public documentation that demonstrates his professional and personal interests in the content of the disputed domain name. Anyone who searches on his name will find that he is heavily involved in the neurotech industry, has demonstrated

entrepreneurial interests, and consults to companies that make devices that are implanted in the cortex of the brain and connect to computers.

The Respondent objects in the strongest possible terms to the claim that he registered the domain name in bad faith. The statements that he made in response to the Complainant's proposal for settlement of the dispute was not that he would sell the domain names to the Complainant, but that he would be open to hearing offers, which he would consider if they exceeded the "personal value" he assigns to them. The "so-called 'fair market value' is irrelevant" to the value that he personally assigns to the domain names. The personal value that he assigns to the disputed domain name is USD 20,000, and the combined personal value that he assigns to the other two domain names is USD 30,000.

## **6. Discussion and Findings**

### **A. Admission of Supplemental Filings**

The Complainant's Supplemental Filing contained evidence of the Respondent's reply to the Complainant's offer to settle the dispute, being an offer made in response to a statement contained in the Respondent's Response to the Complaint. This evidence is material and relevant to this administrative proceeding, and could not reasonably have been included in the Complaint. Accordingly, the Panel has exercised its discretion to admit into the case file the Complainant's Supplemental Filing, and the Respondent's Supplemental Filing in reply to it.

### **B. Identical or Confusingly Similar**

Once the generic Top-Level Domain ("gTLD") ".com" is ignored (which is appropriate in this case), the disputed domain name consists of the Complainant's registered word trademark CORTEX followed by the word "computer". The Complainant's trademark is clearly recognizable within the disputed domain name. The addition of the word "computer" (being a device associated with the Complainant's products) does not avoid a finding of confusing similarity of the disputed domain name with the trademark. Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

### **C. Rights or Legitimate Interests**

The Respondent is not a licensee of the Complainant, is not otherwise affiliated with the Complainant, and has not been authorized by the Complainant to use its CORTEX trademark. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name. The evidence provided by the Complainant shows that the disputed domain name does not resolve to an active website. The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The substance of the Respondent's reply to this *prima facie* case is that he has a professional (and a personal) interest in the field of neurotechnology, in particular in devices that are implanted in the cortex of the human brain and that interface with computers, and that he proposes to use the disputed domain name in a future entrepreneurial project in that area. Not surprisingly given that the Respondent's Response and Supplemental Filing appear to have been prepared without the assistance of legal counsel, the Respondent's case is rather loosely structured in its argument and somewhat light in its evidentiary support. Nevertheless, the Respondent's claim as to his motive in registering the disputed domain name is not clearly fanciful and without basis.

To assess the validity of the Respondent's claim, the Panel has accessed the various content about him and his activities that is presented on his website at "www.harrisoncanning.com", on his student-lead research laboratory's website at "www.nxtr.org", on his influencer website at "www.bciguys.com", on his twitter account at "www.twitter.com/bciguys", on his Instagram account at "www.instagram.com/bciguys", on his

youtube channel at “www.youtube.com/c/TheBCIGuys”, and in some news articles on his College’s website, including at “www.rit.edu/news/rit-student-and-alumnus-follow-passion-neurotechnology”. That content plausibly establishes that the Respondent has graduated from studies in the field of neurotechnology, conducts research in relation to brain-computer interfacing, and undertakes a range of entrepreneurial activities. This material is consistent with the Respondent’s asserted motive for registering of the dispute domain name – and for registering two other domain names not the subject of this dispute (<computercortex.com> and <cortexcomputerinterface.com>) – namely, for future use in relation to a device that is implanted in the cortex of the brain and connects to computers.

There is no evidence currently before the Panel that suggests the Respondent’s asserted motive for registering the disputed domain name is simply a cloak for some other, mal-intentioned, motive. It is true that the Respondent assigned a “personal value” of USD 20,000 to the disputed domain name, when rejecting the Complainant’s proposal for settlement of the dispute. It seems to the Panel that this “personal value” of USD 20,000 is almost certainly influenced by commercial considerations – that is, it reflects a perception of the disputed domain name’s commercial value, not just the degree of personal attachment the Respondent has to it. However, being influenced by commercial considerations when assigning a value to a domain name is not, of itself, evidence that the holder of the domain name does not have rights or legitimate interests in it. If, as is the situation here, the holder of the domain name makes out a case that they have rights or legitimate interests in it, that case does not fall away simply because the holder places a high – and, perhaps to others, an unrealistic – value on the domain name. In the context of the particular facts of this case, the Panel does not consider that the willingness of the Respondent to transfer the disputed domain name to the Complainant for a sum significantly in excess of his admitted out-of-pocket costs related to the domain name establishes that the Respondent’s motive in registering the disputed domain name was other than the one he asserted and supported with evidence.

Having carefully weighed the evidence before it, the Panel finds, on the balance of probabilities, that the Respondent has rights or legitimate interests in the disputed domain name. Accordingly, the Panel finds that the Complaint fails.

#### **D. Registered and Used in Bad Faith**

Given the above finding, that the Respondent has demonstrated he has rights or legitimate interests in the disputed domain name, it is not strictly necessary for the Panel to rule on the issue of whether the Respondent registered and has used the disputed domain name in bad faith. Nevertheless, the Panel will do so for the sake of fully exposing its reasoning on the facts before it.

There is nothing in the facts presented to the Panel that supports a claim that the Respondent was aware of the Complainant’s trademark at the time of registration of the disputed domain name – or, indeed, at any time prior to the filing of the Complaint. The Respondent’s claim that he was not aware of the Complainant’s CORTEX product line because he is not in the microprocessor industry is not inherently implausible. Accordingly, the Panel is unable to conclude that the Respondent registered the disputed domain name in bad faith.

There is no evidence before the Panel establishing that the Respondent has used the disputed domain name in any substantive way at all. While a passive holding of a domain name can constitute use of it in bad faith, a finding to that effect can only be made where the totality of the circumstances indicate that the Respondent is acting in bad faith. Notable in this case is that there is a plausible good faith use to which the Respondent could put the disputed domain name. The totality of the circumstances before the Panel in this case do not establish that the Respondent is acting in bad faith. Accordingly, the Panel is unable to conclude that the Respondent is using the disputed domain name in bad faith.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Andrew F. Christie/*

**Andrew F. Christie**

Sole Panelist

Date: August 30, 2022