

## **ADMINISTRATIVE PANEL DECISION**

Cummins Inc. v. Mr. Reza Hamzi, Roshangar Rayane Tehran  
Case No. DIR2022-0015

### **1. The Parties**

The Complainant is Cummins Inc., United States of America, represented by Saba & Co. IP, Lebanon.

The Respondent is Mr. Reza Hamzi, Roshangar Rayane Tehran, Iran (Islamic Republic of).

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

The disputed domain name <cumminscenter.ir> is registered with IRNIC.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 28, 2022. On July 29, 2022, the Center transmitted by email to IRNIC a request for registrar verification in connection with the disputed domain name. On July 30, 2022, IRNIC transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .ir Domain Name Dispute Resolution Policy (the “Policy” or “irDRP”), the Rules for .ir Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for .ir Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 9, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was August 29, 2022. On September 1, 2022, the Center notified the Respondent’s default.

The Center appointed Andrea Mondini as the sole panelist in this matter on September 15, 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.

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

The Complainant designs, manufactures, sells and services diesel engines, turbochargers, spare parts, filters, generators, and related technology around the world.

The Complainant owns trademarks with the element CUMMINS in numerous countries, *inter alia*, the Iranian Trademark CUMMINS (figurative, Registration No. 320233 registered on January 19, 2019 in class 7 and 12) and the Iranian Trademark CUMMINS (word mark, Registration No. 20400 registered on June 26, 1960 in classes 35, 37, 39 and 40).

The Complainant is also the registrant of the domain name <cummins.com>.

The disputed domain name was registered on April 28, 2015.

The disputed domain name directs to the website “www.cumminscenter.com” which promotes a shop that is “importing and selling the main spare parts of CUMMINS engines and reputable brands replacing CUMMINS’ main replacement.”

#### **5. Parties’ Contentions**

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

The Complainant contends as follows:

The disputed domain name is identical to the CUMMINS trademark in which the Complainant has rights, because it incorporates this trademark in its entirety, and the addition of the word “center” is not sufficient to avoid confusing similarity.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The mark CUMMINS is well known. The Respondent is not commonly known by the disputed domain name and has not been authorized by the Complainant to use this trademark and there is no evidence of the Respondent’s use, or demonstrable preparation to use, the disputed domain name in connection with a *bona fide* offering of goods and services.

The disputed domain name was registered and is being used in bad faith because it is obvious that the Respondent had knowledge of both the Complainant and its well known trademark CUMMINS at the time it registered the disputed domain name, considering in particular that the website to which the disputed domain name resolves refers to the Complainant’s products.

The Respondent’s disputed domain name contains the word CUMMINS, it directs to the website at “www.cumminscenter.com” which also contains the CUMMINS mark on its home page, in addition to photos of the Complainant’s CUMMINS spare parts, in order to attract Internet users for commercial gain. This unauthorized use of the mark and product photos creates a likelihood of confusion among the consumers and misleads them about the business relationship between the Respondent and the Complainant. The Respondent’s failure to respond to the cease and desist letters from the Complainant also constitutes evidence of bad faith.

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

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

## 6. Discussion and Findings

According to paragraph 4(a) of the Policy, in order to succeed, a complainant must establish each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to the trademark or service mark in which the complainant has rights;
- (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 or is being used in bad faith.

### A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trademark registrations for its CUMMINS trademark.

The Panel notes that the disputed domain name incorporates the CUMMINS trademark in its entirety. The addition of the word “center” does not prevent a finding of confusing similarity under Policy, paragraph 4(a)(i). See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.8.<sup>1</sup>

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s mark CUMMINS.

The first element of paragraph 4(a) of the Policy has been met.

### B. Rights or Legitimate Interests

The Complainant states it has not authorized the Respondent to use the trademark CUMMINS. The Panel does not see any contrary evidence from the record.

The disputed domain name resolves to the website at “www.cumminscenter.com” which is promoting a shop that is “importing and selling the main spare parts of CUMMINS engines and reputable brands replacing CUMMINS’ main replacement.” ([WIPO Overview 3.0](#), section 2.8.1). Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant’s trademark to undertake sales or repairs related to the complainant’s goods or services may be making a *bona fide* offering of goods and services and thus have a legitimate interest in such domain name. As outlined in the “Oki Data test”, the following cumulative requirements will be applied:

- (i) the respondent must actually be offering the goods or services at issue;
- (ii) the respondent must use the site to sell only the trademarked goods or services;
- (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and
- (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark. (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#), <okidataparts.com>).

Although the Complainant has not submitted the entire translation of the Respondent’s website, it appears from the screenshots submitted with the Complaint that in the present case the Respondent may meet the first requirement of the Oki Data Test, but does not meet the other three requirements.

As to the second requirement, the Respondent’s website states that the Respondent is also importing and selling main spare parts “of reputable brands replacing CUMMINS’ main spare parts”, which implies that they are not spare parts made by the Complainant. It appears therefore that the Respondent does not use the site to sell only the trademarked goods or services.

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<sup>1</sup> Noting the substantive similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy (“UDRP”), the Panel has referred to prior UDRP cases, and the doctrine reflected in the [WIPO Overview 3.0](#), where appropriate.

As to the third requirement, the Respondent's website features the Complainant's logo but does not accurately and prominently disclose the lack relationship with the Complainant. Rather, the Respondent creates the impression of being an official distributor or licensee of the Complainant, although it is not.

As to the fourth requirement, by registering the domain names <cumminscenter.ir> and <cumminscenter.com>, the Respondent appears to try to attempt to corner the market.

In the view of the Panel, the Complainant has therefore succeeded in raising a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. For its part, the Respondent failed to provide any explanations as to any rights or legitimate interests. Therefore, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name.

The second element of paragraph 4(a) of the Policy has been met.

### **C. Registered or Used in Bad Faith**

The Complainant has shown to the satisfaction of the Panel that its CUMMINS trademark is well-known. In the view of the Panel, it is inconceivable that the Respondent could have registered the disputed domain name without knowledge of the Complainant's well-known trademark, considering in particular that the website to which the disputed domain name resolves refers to the Complainant's products. The Respondent's website to which the disputed domain name resolves creates the false impression that the Respondent would be an official distributor or licensee of the Complainant. Furthermore, the Respondent failed to respond to the cease and desist letters from the Complainant.

The Panel thus finds that the disputed domain name was registered and is being used in bad faith.

The third element of paragraph 4(a) of the Policy has been met.

## **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 <cumminscenter.ir> be transferred to the Complainant.

/Andrea Mondini/

**Andrea Mondini**

Sole Panelist

Date: September 26, 2022