



Asian Domain Name Dispute Resolution Centre  
*- a charitable institution limited by guarantee registered in Hong Kong*

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1400682</b>
<b>Complainant:</b>	<b>Cummins Inc.</b>
<b>Respondent:</b>	<b>Liu Kai Feng</b>
<b>Disputed Domain Name:</b>	<b>&lt; hydrcummins.com &gt;</b>

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

The Complainant is Cummins Inc., of 500 Jackson Street, Columbus, Indiana, USA. The Complainant's authorized representative is Mayer Brown JSM, of 16<sup>th</sup> to 19<sup>th</sup> Floor, Prince's Building, 10 Chater Road, Central, Hong Kong.

The Respondent is Liu Kai Feng, of Shi Yan Shi Bai Lang Jing Ji Kai Fa Qu Qi Pei Cheng Wan Lian Da Qu 1005Hao, Shi Yan, Hu Bei, 442013, China.

The domain name at issue is <hydrcummins.com> (the "Disputed Domain Name"), registered by the Respondent with Foshan YiDong Network Co. Ltd.

**2. Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("the Centre") on 15<sup>th</sup> December 2014. On 16<sup>th</sup> December 2014, the Centre notified the Complainant the receipt of its Complaint. The Centre transmitted a request for registrar verification in connection with the Disputed Domain Name to Foshan YiDong Network Co., LTD on both 16<sup>th</sup> and 18<sup>th</sup> December 2014. On 18<sup>th</sup> December 2014, Foshan YiDong Network Co., LTD responded the Centre 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) Uniform Domain Name Dispute Resolution Policy applied and (v) the language of the registration agreement for the Dispute Domain Name was Chinese.

The Centre verified that the Complaint satisfied the formal requirements of the ICANN Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules"). In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceeding commenced on 29<sup>th</sup> December 2014. According to Article 5 of the Rules, the Respondent was required to submit a Response (the Response Form R and its Annexures) on or before 18<sup>th</sup> January 2015. The Respondent has not filed a Response in

accordance with the Supplemental Rules within the required period of time. On 19<sup>th</sup> January 2015 the Centre notified the parties the proceeding would be continued on default of the Respondent.

The Centre appointed Mr. Solomon Lam as the sole panelist in this matter on 20<sup>th</sup> January 2015. Mr. Solomon Lam has confirmed his availability to act as a panelist and his ability to act independently and impartially between the parties to this dispute.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the Supplemental Rules. Therefore, this Panel has jurisdiction over this domain name dispute.

### **3. Language of this proceeding**

In accordance with Paragraph 11(a) of the Rules, 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 language of the Domain Name Registration Agreement is Chinese. However, the Complaint has been submitted in English and the Complainant requested that the language of this proceeding to be English for the following reasons:-

- (a) The Disputed Domain Name resolves to a website in the English language. The Disputed Domain Name also incorporates the international generic domain extension <.com>, and is in Latin script. This demonstrates that the Respondent understands and can communicate in English, and having the proceedings conducted in English would not prejudice the Respondent.
- (b) The Complainant does not speak and is not familiar with the Chinese language. Therefore, if the Complainant were to submit the Complaint in Chinese and to have the whole proceedings conducted in Chinese, the Complainant would have to incur substantial translation costs and this would also cause a delay in the proceedings. It would be unfair on the Complainant to have the proceedings conducted in Chinese rather than English.

The Respondent did not provide any response to the request of the Complainant in relation to the language of this proceeding.

The Panel accepts that the Disputed Domain Name directed to an English website, such that the Respondent should be able to understand English. On the other hand, the Panel also accepts that many of the supporting evidence submitted by the Claimant is written in English. A comprehensive translation from English to Chinese will incur unnecessary time and costs, especially when this proceeding is continued on default of the Respondent.

Having regard to these circumstances, the Panel determined that this proceeding shall be conducted in English.

#### 4. Factual background

Founded in 1919, the Complainant (formerly known as Cummins Engine Company Inc.) designs, manufactures, distributes and services diesel and natural gas engines and related technologies, including fuel systems, controls, air handling, filtration, emission solutions and electrical power generation systems. Headquartered in Columbus, Indiana (USA), the Complainant currently employs about 48,000 people worldwide and serves customers in about 190 countries and territories, including China, through a network of about 600 company-owned and independent distributor locations and about 6,800 dealer locations. In 2013, the Complainant's total net income was about US\$1.48 billion, and its total revenue was US\$17.3 billion. The Complainant is currently listed on the New York Stock Exchange (NYSE: CMI), and is the world's largest independent engine manufacturer. The Complainant has been listed as one of the Fortune 500 companies since 1955, and was recently ranked number 160 in 2013 and 168 in 2014.

The Complainant established its office in Beijing, China in 1979. The Complainant is currently the largest foreign investor in China's diesel engine industry, and has operations that cover mainland China, Hong Kong, Macau, Taiwan, Mongolia and several other countries in Asia. In China, the Complainant has about 26 facilities, including 15 manufacturing sites, over 8,000 employees, and had over US\$3.7 billion in sales in 2011. In 1995, the Complainant formed its first joint venture in China, and now has the following joint ventures with leading Chinese companies:

- (a) Chongqing Cummins Engine Company, Ltd – a joint venture in China with Chongqing Machinery and Electrics Co. Ltd. This joint venture manufactures several models of the Complainant's heavy-duty and high-horsepower diesel engines, primarily serving the industrial and stationary power markets in China;
- (b) Dongfeng Cummins Engine Company Ltd. ("Dongfeng Cummins") – a joint venture in China with Dongfeng Automobile Co. Ltd (a subsidiary of Dongfeng Motor Corporation, one of the largest medium-duty and heavy-duty truck manufacturers in China), which produces mechanical engines, full-electric diesel engines and natural gas engines;
- (c) Beijing Foton Cummins Engine Co. Ltd – a joint venture in China with Beiqi Foton Motor Co. Ltd., a commercial vehicle manufacturer, which consists of a light-duty business and a heavy-duty business;
- (d) Shanghai Fleetguard Filter Co. Ltd – a joint venture in China with Dongfeng Motor Parts & Components (Group) Co., Ltd., which manufactures filtration systems;
- (e) Guangxi Cummins Industrial Power Co. Ltd – a joint venture in China with Guangxi LiuGong Machinery Co., Ltd., which manufactures diesel engines for use in various construction equipment.

The Disputed Domain Name was registered on 4<sup>th</sup> March 2014.

## 5. Parties' Contentions

### A. Complainant

The Complainant's contentions can be summarized as follows:

#### (i) **The Disputed Domain Name is Identical or Confusingly Similar**

The Complainant has registered numerous trademarks around the world comprising the word "CUMMINS", including the following:-

- 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.

Therefore, the Complainant has established that it has rights in the Cummins Trademarks in China, Hong Kong, Taiwan and other parts of the world.

The Complainant submits that the Disputed Domain Name (<hydfcummins.com>) incorporates the Complainant's "CUMMINS" trademark in its entirety. The only difference is the inclusion of "hydf" as a prefix. The Complainant submits that it is well established that where the distinctive and prominent element of a disputed domain name is the complainant's mark and the only deviation is the inclusion of a descriptive or non-descriptive matter, such does not negate the confusing similarity between the disputed domain name and the mark. In this case, the addition of the letters "hydf" does nothing to reduce the confusing similarity of the Disputed Domain Name with the Cummins Trademarks, and the Disputed Domain Name will inevitably confuse users into believing that it was registered by or is affiliated with the Complainant. This confusion is exacerbated by the fact that the website to which the Disputed Domain Name resolves purports to sell products produced by the Complainant and to be an authorised dealer of the Complainant's joint venture, Dongfeng Cummins. The word "dfcummins" in the Disputed Domain Name is therefore also likely to be a reference to "Dongfeng Cummins", the Complainant's joint venture, which adds to the likelihood of confusion on the part of users. In particular, the panel found in *Cummins Inc. v. DG Lanshan Mechanical Electrical Equipment Co., Ltd.*, ADNDRC Case No. HK-1000286, that the letters "dg" in the domain name <dgcummins.com>, "bears no distinctiveness" and that this coupled with the fact that the domain name website included products that overlap with the Complainant's business, meant that the domain name was confusingly similar to the Complainant's "CUMMINS" mark.

The Complainant submits that it is a well-established rule that in making an enquiry as to whether or not a trademark is identical or confusingly similar to a domain name, the

generic top-level domain extension, in this case <.com>, may be disregarded (see *Rohde & Schwarz GmbH & Co. KG v. Pertshire Marketing, Ltd*, WIPO Case No. D2006-0762).

The Complainant accordingly submits that it has established paragraph 4(a)(i) of the Policy.

(ii) **The Respondent has no rights or legitimate interests in the Disputed Domain Name**

The Complainant submits that the Complainant first began using the Cummins Trademarks in 1919, and its first trademark registration dates back to 1940. The Cummins Trademarks have acquired distinctiveness through their extensive use by the Complainant since 1919, so that the Cummins Trademarks, are immediately recognisable to consumers as being associated with the Complainant and its business.

The Respondent registered the Disputed Domain Name on 4<sup>th</sup> March 2014 – 95 years after the "CUMMINS" trademark was first used, and 74 years after it was first registered by the Complainant. The Complainant has not consented to or otherwise authorised the Respondent's use of its Cummins Trademarks. Given the fame of the Cummins Trademarks, coupled with the fact that the Complainant's adoption and first use of the Cummins Trademarks significantly predates the Respondent's registration of the Disputed Domain Name, has the effect of shifting to the Respondent the burden of proof in establishing that it has rights and/or legitimate interests in the Disputed Domain Name (see *PepsiCo, Inc v. Amilcar Perez Lista d/b/a Cybersor*, WIPO Case No. D2003-0174).

The Complainant submits that there is no evidence to suggest that the Respondent has been commonly known by the Disputed Domain Name. The Respondent's name (Liu Kai Feng) and his business name (Shiyan Haiyu Industry and Trade Co. Ltd) do not reflect or correspond with the Disputed Domain Name, and there is no justification or apparent need for the Respondent to use "Cummins" in the Disputed Domain Name.

Further, to the best of the Complainant's knowledge and information, the Respondent does not own any trademark registrations reflecting or corresponding to the Disputed Domain Name in China (where the Respondent is apparently domiciled). The Complainant submits that it is logical to presume that China would be the first country in which the Respondent would seek to register a trademark, since the Respondent is allegedly domiciled in China.

The Disputed Domain Name currently resolves to a website (the "Website") that purports to sell "CUMMINS" products produced by the Complainant and to be an authorised dealer of the Complainant's joint venture, Dongfeng Cummins. However, the Respondent is not an authorised distributor, reseller or partner of the Complainant or any of its joint ventures. The Website clearly shows that the Respondent is aware of the Complainant and its rights in the Cummins Trademarks.

The Complainant submits that the Respondent is therefore clearly aware of the Complainant and its Cummins Trademarks, and is using the Disputed Domain Name to unfairly take advantage of the confusing similarity between the Cummins Trademarks and the Disputed Domain Name, to attract and redirect Internet users to the Website for commercial gain, which cannot provide the Registrant with a right or legitimate interest in the Disputed Domain Name.

The Respondent is not an authorised reseller of the Complainant's products. The Complainant also does not believe that the products being offered on the Website are genuine products of the Complainant. Even if the products sold by the Respondent are genuine products (which is denied), simply being a reseller does not give the Respondent the right to incorporate the Cummins Trademark in the Disputed Domain Name without the express permission of the Complainant as the trademark holder. The Complainant has never authorised the Respondent to use its Cummins Trademarks 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 submits that the Respondent has taken unfair advantage of the Complainant and its rights in order to unfairly capitalise on the Complainant's goodwill and reputation, which cannot amount to any right or legitimate interest.

Based on the above, the Complainant submits that it has established a prima facie case and that the Respondent is precluded from relying on any of the grounds under paragraph 4(c) of the Policy.

**(iii) No Bona Fide Offering of Services / Use of the Disputed Domain Name in Bad Faith**

The Complainant submits that the Disputed Domain Name has been registered and is being used by the Respondent in bad faith on the following grounds:

- (a) The Respondent has no rights or legitimate interests in the Disputed Domain Name, which is in itself evidence of bad faith.
- (b) The Disputed Domain Name does not reflect or correspond to the Respondent's name or its business name. The Complainant first began using the Cummins Trademarks in 1919 – 95 years before the Disputed Domain Name was registered. The Cummins Trademarks have acquired distinctiveness through their extensive use for almost 100 years by the Complainant in commerce, so that they are immediately recognisable to consumers as being associated with the Complainant. Due to the worldwide fame of the Cummins Trademarks, it is inconceivable that the Respondent was not aware of the Complainant's Cummins Trademarks at the time it registered the Disputed Domain Name, particularly since the Respondent is in the same industry as the Complainant, i.e. manufacturing and selling engines and parts for commercial vehicles, as seen from the Website.
- (c) Further, the Respondent must have been aware of the Complainant's prior rights and interests in the Disputed Domain Name in light of the Website (e.g. use of the Cummins Trademarks on the Website; references to Dongfeng Cummins on the Website; purporting to sell the Complainant's products and to be an "authorised agent" of Dongfeng Cummins, etc). It therefore cannot be mere coincidence that the Respondent registered the Disputed Domain Name, which is confusingly similar to the Complainant's Cummins Trademarks.
- (d) Due to the confusing similarity between the Disputed Domain Name and the Cummins Trademarks, and the fact that the Respondent had to have been aware of the Complainant and its Cummins Trademarks (for the reasons stated above), it is reasonable to infer that the Disputed Domain Name was registered to mislead and

confuse Internet users into believing that the Disputed Domain Name is associated with the Complainant and its Cummins Trademarks, and that the Respondent is an authorized distributor or partner of the Complainant (which is false), in order to increase the number of Internet users that access the Website for commercial gain. See *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455.

- (e) In the case of *康明斯公司 (Cummins Inc.) v. ning lee*, ADNDRC Case No. CN-1200540, the panel held that the use of <sdcummins.net> by the respondent to sell the Complainant's branded products and use of words such as "Service Centre", etc., implied that the respondent had a relationship with the Complainant, which was false and misleading, and therefore amounted to bad faith registration and use. Similarly, in *Cummins Inc. v. DG Lanshan Mechanical Electrical Equipment Co., Ltd.*, ADNDRC Case No. HK-1000286, 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". The same reasoning in the above cases and the other cases can be applied to this current Complaint.
- (f) It is well established that the Respondent's registration and use of the Disputed Domain Name must involve mala fides in circumstances where the registration and use of it was and continues to be made in the full knowledge of the Complainant's prior rights in the Cummins Trademarks, and in circumstances where the Respondent did not seek permission from the Complainant for such registration and use. See *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163, which establishes the principle that registration of a domain name that is confusingly similar to a famous trademark by any entity that does not have a relationship to that mark is itself sufficient evidence of bad faith. See also *Paris Hilton v. Deepak Kumar*, WIPO Case No. D2010-1364.
- (g) The Disputed Domain Name is likely to mislead users into believing that it and the Website is the website for the Complainant's partner or distributor in China (which is false). In these circumstances of blatant misappropriation of the Complainant's brand, there can be no possible grounds on which to find that the Respondent's registration and use of the Disputed Domain Name has been otherwise than in bad faith and for the sole purpose of intentionally attempting to attract users to the Website in order for the Respondent to increase its number of sales, by creating a likelihood of confusion with the Cummins Trademarks as to the source, sponsorship, affiliation, or endorsement of the Website, which may also cause damage to the Complainant's reputation.

The Complainant accordingly submits that it has satisfied paragraph 4(a)(iii) of the Policy.

#### B. Respondent

The Respondent has not filed a Response (the Response Form R and its Annexures) in accordance with the Supplemental Rules.

## 6. Findings

The 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 must be 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

On the evidence before the Panel, the Complainant has established rights in the "CUMMINS" mark through its registration and long use as in China since 2001. The Panel also accepts that the rights are well-known in China, Hong Kong and Taiwan.

The Panel considers that the generic top-level domain <.com> shall be disregarded (see e.g. *Pomellato S.p.A. v. Richard Tonetti*, WIPO Case No. D2000-0493). Therefore, the identifiable part of the Disputed Domain Name is "hydfcummins".

The word "hydfcummins" itself is not a common word and the characters "hydf" in front of the Complainant's mark "CUMMINS" does not give any distinctiveness to it. Therefore, the Panel accepts that the identifiable part of the Disputed Domain Name "hydfcummins" is confusing similar with the Complainant's mark.

Furthermore, the Panel notes that the Complainant has a joint venture in China with Dongfeng Automobile Co. Ltd called Dongfeng Cummins Engine Company Ltd. Therefore, the Panel accepts that the word "dfcummins" in the Disputed Domain Name is likely to be referred to "Dongfeng Cummins", such that it creates additional confusion to the internet users.

Therefore, the Panel finds that Article 4(a)(i) of the Policy is satisfied.

### B) Rights and Legitimate Interests

Even the Respondent did not produce any evidence to support its rights and legitimate interests in using the Disputed Domain Name, the Complainant is still required to prove that the Respondent has no rights and legitimate interests (*Neusiedler Aktiengesellschaft v. Kulkarni*, WIPO Case No. D2000-1769).

As mentioned above, the Panel accepts that the Complainant has rights in the "CUMMINS" mark in China, Hong Kong, Taiwan. And worldwide This pre-dated the registration of the Disputed Domain Name.

The Complainant confirmed that the Respondent is not an authorised distributor, reseller or partner of the Complainant or any of its joint ventures and there is no evidence that the Respondent or its name has any connection with "hydfcummins".

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Panel finds that Article 4(a)(ii) of the Policy is satisfied.

### **C) Bad Faith**

The Panel accepts that the Respondent must have been aware of the Complainant's prior rights and interests in the Disputed Domain Name in light of the Website. It is because the Respondent used the Cummins mark and referred to Dongfeng Cummins on the Website and purported to sell the Complainant's products and to be an "authorised agent" of Dongfeng Cummins.

From the contents of the Website, it is obvious that the Respondent used the Disputed Domain Name intentionally to attract Internet users to the Website for commercial gain by creating a likelihood of confusion with the Complainant's mark. This is the situation stated under Article 4(b)(iv) of the Policy.

The Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the Policy.

## **7. Decision**

The Panel is satisfied that the Complainant has sufficiently proved the existence of all three elements of Paragraph 4(a) of the Policy. The Panel orders the Disputed Domain Name < hydfcummins.com > be transferred to the Complainant.



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Solomon Lam  
Sole Panelist

Dated: 21<sup>st</sup> January 2015