

ADMINISTRATIVE PANEL DECISION

Cummins Inc. v. Jamie Lent

Case No. D2015-0188

1. The Parties

The Complainant is Cummins Inc. of Indiana, United States of America, represented by Mayer Brown LLP, the United States of America.

The Respondent is Jamie Lent of California, United States of America, represented by Wendy S. Peterson, the United States of America.

2. The Domain Name and Registrar

The disputed domain name <cumminsperformanceparts.com> is registered with Melbourne IT, Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on February 4, 2015. On February 5, 2015, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 9, the Registrar transmitted, by email to the Center, its verification response confirming that the Respondent is listed as the registrant and providing the registrant's contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), 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(a) and 4(a), the Center formally notified the Respondent of the Complaint, and that the proceedings commenced on February 16, 2015. In accordance with the Rules, paragraph 5(a), the due date for Response was set to March 8, 2015. The Response was filed with the Center on March 6, 2015.

The Center appointed Mr. Peter L. Michaelson, as the sole panelist in this matter on March 17, 2015. 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

As reflected in the registration record for the disputed domain name in the Whois database (a copy of the record appears in Annex 1 to the Complaint), the disputed domain name <cumminsperformanceparts.com> was registered on May 1, 2010 and is set to expire on May 1, 2015.

A. The Complainant's CUMMINS Marks

As indicated in the Complaint, the Complainant owns numerous national and international trademark registrations for the mark CUMMINS in both block letters and stylized forms. The Complainant has provided a list of its pending trademark applications and trademark registrations in Annex 3 to the Complaint and copies of its US registration certificates in Annex 4 to the Complaint, the latter includes the following representative marks:

1. CUMMINS (block letters)
United States registration no.: 0579346
registered: September 1, 1953

This mark is registered for use in connection with: "Internal combustion engines and parts thereof" in international class 7. This mark claims a date of first use and first use in commerce as of September 30, 1919.

2. C with overlaid word "Cummins" (stylized)
United States registration no.: 4094654
registered: January 31, 2012

This mark is registered for use in connection with: "Decorative decals for vehicles, pens, gift bags, plastic bags for packing, desktop business card holders, blank journals, note pads, note paper, presentation folders, manuals and brochures in the field of operation and maintenance of engines, manuals and brochures in the field of operation and maintenance of power generators and alternators, catalogs in the field of replacement parts for engines, catalogs in the field of replacement parts for generators and alternators", all in international class 16. This mark claims a date of first use and first use in commerce as of November 15, 1973.

3. CUMMINS (block letters)
United States registration no.: 4126702
registered: April 10, 2012

This mark is registered for use in connection with: "Decorative decals for vehicles, pens, gift bags, plastic bags for packing, desktop business card holders, blank journals, note pads, note paper, presentation folders, manuals and brochures in the field of operation and maintenance of engines, manuals and brochures in the field of operation and maintenance of power generators and alternators, catalogs in the field of replacement parts for engines, catalogs in the field of replacement parts for generators and alternators", all in international class 16. This mark claims a date of first use and first use in commerce as of November 15, 1973.

B. The Complainant

Founded in 1919, the Complainant 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. The Complainant, headquartered in Columbus, Indiana (US), currently employs approximately 48,000 people worldwide and serves customers in approximately 190 countries and territories through a network of about 600 company-owned and independent distributor

locations and about 6,800 dealer locations.

In 2013, the Complainant's total revenues and net income were approximately USD 17.3 Billion and 1.48 Billion, respectively. The Complainant is currently listed on the New York Stock Exchange and is the world's largest independent engine manufacturer. Since 1955, the Complainant has been a member of the Fortune 500 companies (see corporate information provided by the Complainant in Annex 2 to the Complaint).

For quite a few decades, the Complainant has expended significant time and effort and considerable resources to extensively promote its marks, and the products and services provided in connection with those marks worldwide through marketing and advertising, in trade press and other print media, as well as, more recently, on the Internet.

C. The Respondent and interactions between the parties

The Respondent initially used the disputed domain name to resolve to his website through which he offered for sale a wide variety of after-market parts for diesel engines and vehicles. Some of those parts were manufactured by the Complainant and the rest were manufactured by third-parties, unrelated to the Complainant, and which carried marks of their corresponding manufacturers. The name was also prominently displayed on the home page of the website.

On September 29, 2010, the Respondent filed a fictitious name certificate with the Pennsylvania Department of State for the business name "Cummins Performance Parts", under which name the Respondent then conducted his business (a copy of the record for this filing from the publicly accessible online database provided by the Pennsylvania Department of State appears in Annex 7 to the Complaint, with a certified copy of the actual filed certificate appearing in Annex A to the Response).

On December 15, 2014, the Complainant's counsel sent a cease and desist letter to the Respondent demanding that the Respondent cease use of the Cummins Marks both within his domain name and his business name (a copy of the letter also appears in Annex 7 to the Complaint). In response, Respondent deleted the references to the disputed domain name <cumminsperformanceparts.com> from his website, registered the domain name <cppdiesel.com> on December 16, 2014 (a copy of the Whois record for that domain name appears in Annex 7), and began using the disputed domain name to redirect users to his new website at <cppdiesel.com>. The Respondent refused to assign the disputed domain name to the Complainant. This re-direction continues to the present. Both the Respondent's prior and present websites are highly similar, with the present website, just as the prior website did, featuring branded after-market parts for engines and vehicles from the Complainant and also from third-parties not associated with the Complainant (a screenshot of the home page of the present website appears in Annex 5 to the Complaint).

5. Parties' Contentions

A. Complainant

(i) Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to the CUMMINS Marks.

Specifically, the disputed domain name contains the mark "CUMMINS" to which the words "performance parts" (though without the space) have been appended, with those words being incapable of adding sufficient distinctiveness whatsoever to the resulting domain name to mitigate any resulting user confusion between the name and the mark.

Hence, the Complainant believes that it has satisfied the confusing similarity/identity requirement in paragraph 4(a)(i) of the Policy.

(ii) Rights or Legitimate Interests

The Complainant contends that, for various reasons, the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

First, the Complainant has not authorized or otherwise consented to the Respondent's use of the CUMMINS Marks.

Second, the Respondent is not known by the name "Cummins Performance Parts" -- which is the formative portion of the disputed domain name. The Respondent's name, Jamie Lent, and the trade name that he is currently operating under, CPP Diesel, do not reflect or correspond with that formative portion. Further, there is no justification or apparent need for the Respondent to use the mark CUMMINS in the disputed domain name. 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 the United States where the Respondent is domiciled.

Third, the disputed domain name currently resolves, via automatic re-direction, to the Respondent's website (a copy of the home page appears in Annex 5 to the Complaint) which appears to sell after-market CUMMINS-branded products produced by the Complainant. However, the Respondent is not an authorized distributor, reseller or partner of the Complainant nor is Respondent affiliated or endorsed by Complainant in any way. Further, before the Respondent modified his website on or shortly after December 16, 2014, the website prominently displayed the disputed domain name. Moreover, the Respondent registered his business under the name "Cummins Performance Parts" with the Pennsylvania Secretary of State (see a corresponding entry from a publicly accessible online database provided by the Pennsylvania Secretary of State appearing in Annex 7 to the Complaint). Consequently, there is no doubt that the Respondent is aware of the Complainant and its rights in the CUMMINS Marks and with that awareness is using the disputed domain name to exploit the confusing similarity between those marks and the name to attract and redirect Internet users to his website for commercial gain. Such a use does not bestow on the Respondent any right or legitimate interest in the name.

Fourth, the Respondent is not an authorized reseller of the Complainant's products and is not affiliated or endorsed by Complainant in any way. Even if the products sold by the Respondent are genuine products of the Complainant, simply being a reseller does not give the Respondent the right to incorporate the CUMMINS Marks in the name without the express permission of the Complainant -- permission which the Complainant has never granted to the Respondent.

Lastly, the Respondent is unfairly capitalizing on the Complainant's goodwill and reputation, which precludes the Respondent from acquiring any right or legitimate interest in the name. In that regard, the Respondent's website offers both the Complainant's products and products manufactured by Complainant's competitors; the disputed domain name provides Internet users with a false impression that the Respondent's company, still registered as Cummins Performance Parts, is associated with the Complainant -- when in actuality there is no such relationship and the website contains no disclaimer to that effect; and the website includes the Complainant's CUMMINS Marks without authorization.

(iii) Registered and Used in Bad Faith

The Complainant also contends that, the Respondent has registered and is using the disputed domain name in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

First, the Respondent has no rights or legitimate interests in the disputed domain name, which itself reflects bad faith.

Second, the Respondent registered the disputed domain name to intentionally mislead and confuse Internet users into believing that the Respondent is an authorized reseller or partner of the Complainant -- which, in actuality, is not true -- in order to illicitly drive increased traffic to the Respondent's website for the Respondent's pecuniary gain. Specifically, the disputed domain name does not reflect or correspond to the Respondent's name or his current trade name. Further, the Complainant first began using the mark CUMMINS in 1919 -- some 91 years prior to the Respondent's registration of the disputed domain name, and has continuously used that mark ever since. Due to the worldwide fame attained by the mark well prior to the date on which the Respondent registered the disputed domain name, the Respondent was clearly aware of the Complainant's mark when he registered the disputed domain name, particularly since the Respondent is in the same industry as the Complainant and purports to sell the Complainant's engines and parts through his website, and thus intentionally chose to exploit the name for his own commercial benefit at the expense of damaging the Complainant's reputation.

B. Respondent

(i) Identical or Confusingly Similar

While the Respondent does not dispute the Claimant's trademark rights in its mark CUMMINS, the Respondent alleges that the disputed domain name is not confusingly similar to that mark.

Specifically, the Respondent contends that "Cummins Performance Parts" is a descriptive term that literally identifies that the Respondent sells parts to change the performance of diesel engines manufactured by the Complainant. Furthermore, the words "Performance Parts" designate "a literal good and legitimate aftermarket sale for sophisticated buyers that are at least amateur mechanics owning diesel engines manufactured by Cummins Inc. that are looking for higher efficiency or other types of higher performance."

(ii) Rights or Legitimate Interests

The Respondent contends, contrary to the Complainant's view, that it has rights and legitimate interests in the disputed domain name.

First, the Respondent points to his filing of his fictitious business certificate in September 29, 2010 and his ensuing use of his business name "Cummins Performance Parts" for over four years thereafter as evidence that the Respondent has become commonly known by that name, which constitutes the disputed domain name, and as such has made *bona fide* use of that domain name.

Second, the Respondent contends that he has a legitimate business selling parts that are manufactured by either by the Complainant or third-parties. Further, the Respondent contends, based on information obtained from various business articles available on the Internet (copies of which appear in Annex B to the Response -- though none of the articles originates with the Complainant), that the Complainant does not compete with any of the third-parties and that, for those entities which those articles note as being competitors of the Complainant, the Respondent does not sell any of their after-market parts through his website.

Third, the Respondent states that the only viable method for him to describe parts that are manufactured by the Complainant is to identify the parts by the Complainant's name -- even though the Respondent makes no claim to be an authorized dealer of the Complainant or have any association whatsoever with the Complainant. The Respondent acknowledges that he sells parts made by manufacturers, other than the Complainant, which he identifies by the name or mark of the corresponding manufacturer.

(iii) Registered and Used in Bad Faith

Moreover, the Respondent contends that he did not register and use the disputed domain name in bad faith.

First, the Complainant has not identified any trademark registrations that it owns which targets the

performance after-market. Nor has the Complainant identified any subjective evidence that buyers of engines manufactured by the Complainant are “confused about the origin of performance parts when they see advertisements for Cummins Performance Parts”.

Second, the Complainant did not make any specific factual findings of bad faith nor did the Complainant prove that the Respondent violated any of the factors specifically enumerated in paragraph 4(b) of the Policy as reflecting bad faith.

Third, the Respondent had already been operating his business under the name “Cummins Performance Parts” and using the disputed domain name for over four years prior to when the Complainant filed its complaint with the Center to initiate the present proceeding. Accordingly, the present Complaint may be barred by laches.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s mark CUMMINS.

From a simple comparison of the disputed domain name to the Complainant’s mark CUMMINS, no doubt exists that the disputed domain name is confusingly similar to the Complainant’s mark. The primary difference between the disputed domain name and the mark is appending the words “performance parts”, without the intervening space, to form a separate corresponding composite term “cumminsperformanceparts” along with, secondarily, appending the generic Top-Level Domain (gTLD) “.com” to that term to form the disputed domain name, with the last addition being irrelevant in assessing confusing similarity or identity under paragraph 4(a)(i) of the Policy and thus ignored.

It is now very well-established in UDRP precedent, including numerous decisions previously rendered by this Panel, that a minor variation, such as adding a short letter or number group, or even generic or highly descriptive words, or geographic identifiers, such as a country name, to a mark, is usually insufficient in and of itself, when used in forming a domain name that results from modifying the mark, to confer requisite and sufficient distinctiveness to that name to avoid user confusion. Here, adding the words “performance parts” - which the Respondent specifically acknowledges are descriptive -- in the manner which the Respondent specifically did, to the mark CUMMINS clearly resulted in such a minor variation. See, e.g., *Staatliche Porzellan-Manufaktur Meissen GmbH v. Buy Meissen*, WIPO Case No. D2013-1687; *Forideas Pty Limited v. Movember Organization*, WIPO Case No. D2013-1385; *AlgaeCal Inc. v. AlgaeCal Fraud*, WIPO Case No. D2013-1248; *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106; *National Westminster Bank plc v. Steve Mart*, WIPO Case No. D2012-1711; *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *National Association of Realtors v. Hammerberg & Associates, Inc.*, WIPO Case No. D2012-0075; *Space Needle LLC v. Erik Olson*, WIPO Case No. D2011-0931; *Oakley, Inc. v. Kate Elsberry, Elsberry Castro*, WIPO Case No. D2009-1286; *Clearwire Legacy, LLC v. Leon Ganesh*, WIPO Case No. D2010-0148; *Burberry Limited v. Domain Admin*, WIPO Case No. D2009-0703; *Krispy Kreme Doughnuts, Inc. v. John Sharp*, WIPO Case No. D2009-0099; *MasterCard International Incorporated v. Global Prepaid*, WIPO Case No. D2008-2008; *HRB Innovations Inc., Express Tax Service Inc. v. Calvin Brown*, WIPO Case No. D2008-1072; *Dreamworks Animation, LLC v. Creahq, Mike Furlong*, WIPO Case No. D2008-0505; *Marvel Manufacturing Company Inc. v. Koba Internet Sales, LP*, WIPO Case No. D2008-0265; *MySpace, Inc. v. Edwin De Jesus, EDJ Associates Inc.*, WIPO Case No. D2007-1878; *BlackRock, Inc. v. blackrockfinancialservices.com*, WIPO Case No. D2007-1627; *F. Hoffmann-La Roche AG v. Transliner Consultants*, WIPO Case No. D2007-1359; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064; *Toilets.com, Inc. v. Rons Porta Johns*, WIPO Case No. D2007-0952; *Associated Bank Corp. v. Texas International Property Associates*, WIPO Case No. D2007-0334; *Gerber Childrenswear Inc. v. David Webb*, WIPO Case No. D2007-0317; *SPX Corporation v. Hevun Diversified Corporation*, NAF Claim No. 791657; *Google Inc. v. Jennifer Burns*, NAF

Claim No. 726096; *The Cheesecake Factory Inc. and The Cheesecake Factory Assets Co., LLC v. Say Cheesecake*, WIPO Case No. D2005-0766; *Napster, Inc. v. Giovanni Vinscani*, WIPO Case No. D2005-0531; *Caesars Entertainment, Inc. v. Nova Internet Inc.*, WIPO Case No. D2005-0411; *Lockheed Martin Corporation v. The Skunkworx Custom Cycle*, WIPO Case No. D2004-0824; *Lockheed Martin Corporation v. Deborah Teramani*, WIPO Case No. D2004-0836; *National Collegiate Athletic Association v. Dusty Brown*, WIPO Case No. D2004-0491.

Moreover, by including the generic words “performance parts” with the Complainant’s mark CUMMINS to form the disputed domain name, the potential for user confusion is likely to be exacerbated, not reduced. It is quite conceivable, given current common naming conventions and patterns in use on the Internet, that an Internet user, who seeks information on engine or vehicular after-market performance parts manufactured by the Complainant, but is uncertain of its associated domain name for use in accessing its website, would form a domain name by prepending the term “performance parts” to the mark CUMMINS to form a composite name and then add the common gTLD “.com” to yield a resulting domain name <cumminsperformanceparts.com>. The user would then insert that domain name into his/her browser with a reasonable expectation that doing so would direct that browser to either the Complainant’s website or a website authorized by the Complainant from which that user could obtain information for the Complainant’s branded after-market performance parts. However, here the Respondent registered that domain name. The result is that the user’s action would cause that person not to be taken to the Complainant’s website, but rather, and without that user realizing the diversion, to the Respondent’s website instead (whether it had been to the Respondent’s prior website at <cumminsperformanceparts.com> or, as a result of automatic redirection, to his present website at <cppdiesel.com>). There, the user would be presented with not only parts apparently originating from the Complainant but also from third-parties, some of which contrary to the Respondent’s view, being applicable to engines and vehicles, may well originate from some of the Complainant’s competitors.

Thus, the user would very likely be deceived into thinking that the Respondent’s website was affiliated with, authorized by or related in some fashion to the Complainant when, in fact, it was not. Hence, adding the term “performance parts” to the mark CUMMINS, as the Respondent did, only heightens the likelihood of the Respondent causing user deception and ensuing confusion to the Respondent’s ultimate benefit and the detriment of Complainant. See, e.g., *Tommy Bahama Group, Inc. v. Berno Group International*, WIPO Case No. D2012-0531; *Krispy Kreme Doughnuts, Inc. v. John Sharp*, WIPO Case No. D2009-0099; and *Nat’l Assn. of Realtors, Space Needle, Burberry, Dreamworks and MySpace*, all cited *supra*.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s CUMMINS Marks. Hence, the Complainant has satisfied its burden under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

Based on the evidence of record here, the Panel finds that no basis exists which would appear to legitimize a claim of rights or legitimate interests by the Respondent to the disputed domain name under paragraph 4(c) of the Policy.

The Complainant has never authorized the Respondent to utilize any of the CUMMINS marks nor does the Complainant apparently have any relationship or association whatsoever with the Respondent.

Contrary to the Respondent’s view, merely filing a fictitious name certificate for the name “Cummins Performance Parts” and operating a business under that name for four years does not, in and of itself constitute requisite proof that the Respondent became commonly known by that name. The record before the Panel is simply devoid of any evidence, whether direct or indirect -- the latter being typified by marketing or other promotional steps taken by the Respondent, which proves that the Respondent actually acquired sufficient recognition in his marketplace to become commonly known by its name, *i.e.* that the name acquired secondary meaning in favor of the Respondent. In fact, given the exclusive trademark rights that reside in the Complainant, the Respondent could never legitimately acquire any public association between

his business and the mark CUMMINS or even any mark similar thereto, at least for the goods and services provided by the Complainant under its marks. As such, the Respondent could never likely become commonly known by either the disputed domain name or the mark CUMMINS, for the goods he sells which are either identical to or sufficiently similar to those listed on the Complainant's trademark registrations, without infringing on the exclusive trademark rights of the Complainant. This is so in light of the Complainant's exclusive trademark rights which date back to no later than September 30, 1919 -- which, in conjunction with the Complainant's exhaustive worldwide reputation established under its marks for the goods and services for which those marks are registered (and which encompass the after-market performance parts sold by the Respondent) -- substantially predate, by several decades, the date, May 1, 2010, when the Respondent registered the disputed domain name. See, e.g., *Staatliche Porzellan-Manufaktur Meissen GmbH, Forideas, National Westminster, Tommy Bahama, Amy Stran, Space Needle, Oakley, Burberry, HRB Innovations and MySpace*, all cited *supra*; and *General Motors LLC v. Carol Schadt*, WIPO Case No. D2012-2106. Hence, the Respondent does not fall within paragraph 4(c)(ii) of the Policy.

There can simply be no question that the Respondent was well aware of the Complainant, its mark CUMMINS and its reputation when the Respondent registered the disputed domain name -- as the express purpose of the Respondent's business at the time was (and continues to be) to sell after-market parts manufactured by the Complainant. Yet, in spite of that reputation, the Respondent intentionally registered the domain name and used it as an Internet address, whether previously directly to his website or now through re-direction to his present website, through which the Respondent not only sells and continues to sell after-market performance parts manufactured by the Complainant but also performance parts destined for the same general market, *i.e.* engines and vehicles, manufactured and branded by third-parties unrelated to the Complainant. Thus, the Respondent is using the disputed domain name and exploiting the reputation and goodwill inherent in the Complainant's mark CUMMINS, without the Complainant's permission, authority or consent to promote the sale of third-party goods. Offering goods in this fashion, as the Respondent has done and continues to do, by illicitly exploiting the reputation and goodwill of a rights-holder's mark is not a *bona fide* offer within the meaning of paragraph 4(c)(i) of the Policy.

Lastly, as the Respondent's use of the domain name is commercial in nature, this use does not constitute either a noncommercial or fair use under paragraph 4(c)(iii) of the Policy.

As such, based on the evidence presently before the Panel, the Respondent does not fall within any of paragraphs 4(c)(i)-(iii) of the Policy. Also, there is simply no evidence that the Respondent has acquired, through any other means, any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name within paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that the Respondent's actions, with respect to the disputed domain name, constitute bad faith registration and use.

It is indisputable that the Respondent was well aware of the Complainant, its reputation and its mark CUMMINS when the Respondent registered the disputed domain name for the simple reason, as discussed above, that one purpose of the Respondent's business was to sell after-market engine and vehicular performance parts manufactured by the Complainant and carrying the Complainant's mark. Yet, in spite of that knowledge and in the absence of any authority to do so from the Complainant, the Respondent intentionally chose and registered the disputed domain name containing the Complainant's mark for its potential to cause confusion with that mark. In that regard, not only did the Respondent, through his website addressable by the disputed domain name, offer to sell after-market parts manufactured by the Complainant he also offered such parts manufactured by third-parties, which have no relationship with the Complainant, and carrying corresponding marks of those parties.

Specifically, the Respondent deliberately registered the domain name and then used it to opportunistically exploit the Complainant's reputation for the Respondent's own pecuniary benefit by illicitly utilizing that reputation to advance the notoriety and ultimately sales of third-party after-market engine and vehicular performance parts to the Complaint's detriment -- certainly to the extent any of those parts were then competing with any of the Complainant's offerings. Internet users who visited the website expecting, from the disputed domain name, to just see the Complainant's parts were also presented with the third-party offerings and thus likely confused into believing that a relationship existed between the Complainant and the Respondent or that the Respondent was somehow affiliated with or sponsored by the Respondent -- when in actuality the parties, as the Respondent expressly acknowledged, had no such connection whatsoever.

Further, given the rather extensive worldwide reputation and market recognition inherent in the Complaint's mark CUMMINS, the Respondent's use of it within the disputed domain name undoubtedly increased the traffic to the Respondent's website over what it would otherwise have been, thus further enhancing the Respondent's pecuniary benefit while compounding the potential to further damage the Complainant's reputation and lost sales.

Even though as a result of the Complainant's cease and desist letter, the Respondent deleted reference, on the home page of his website, to the disputed domain name and also changed the address of his website to <cppdiesel.com>, the Respondent did not cease use of the disputed domain name. Rather than terminating this use, the Respondent just changed the functionality of the name from being a website address to automatically re-direct Internet users to his website at "www.cppdiesel.com". From the perspective of causing confusion to Internet users as well as injury to the Complainant, such a change exploits the Complainant's mark inherent in the disputed domain name to the same extent as when the name directly addressed the Respondent's website.

Hence, the Panel concludes that the Respondent's registration and use of the disputed domain name fall within the bad faith provision of paragraphs 4(a)(iii) and 4(b)(iv) of the Policy.

As to any defense of laches advanced by the Respondent, generally speaking, the burden is on the Respondent to affirmatively prove that the Complainant, as rights-holder, knew of the possible infringement of its rights by the Respondent and, in spite of that knowledge, delayed for an undue period of time taking any action against the Respondent to cease such infringement and protect its rights -- such as by filing the present Complaint, and that the Respondent had relied on that inactivity. At its core, laches is an equitable remedy designed to prevent injury to a party, which might otherwise arise, as a result of that party having relied on the prolonged inactivity of another where the latter seeks to assert its rights which would upset a long-term status quo that then exists between the parties. Here, the Respondent offered no proof as to when the Complainant first became aware of the Respondent and his use of the disputed domain name and whether the Complainant had refrained from taking suitable action over a prolonged period of time and whether the Respondent had relied on the Complainant's delay. In the absence of such proof, the Panel simply infers that the Complainant acquired its knowledge of the Respondent and the disputed domain name within a relatively short period, perhaps a few weeks or even just a few days, prior to sending its cease and desist letter on December 15, 2014 to the Respondent -- clearly not evidencing delay sufficient, under the circumstances here, to successfully invoke a defense of laches. Various UDRP panels have held that the doctrine of laches is inimical to the Policy because enforcing trademark rights should not be refused simply due to the passage of time. See, e.g., *The Hebrew University of Jerusalem v. Alberta Hot Rods*, WIPO Case No. D2002-0616; *The E.W. Scripps Company v. Sinologic Industries*, WIPO Case No. D2003-0447 and *Tom Cruise v. Network Operations Center/ Alberta Hot Rods*, WIPO Case No. D2006-0560. However, this Panel need not globally address whether laches is generally available as a defense or not under the Policy, as the facts of record here, assuming arguendo that laches is available, simply do not reflect that the Complainant has unduly delayed in enforcing its rights under the Policy, thus rendering moot any potential application of laches.

Thus, the Panel concludes that the Complainant has provided sufficient proof of its allegations, with respect to the disputed domain name, to establish a case under paragraph 4(a) of the Policy upon which the relief it

now seeks can be granted.

7. Decision

Accordingly, under paragraph 4(i) of the UDRP and paragraph 15 of the UDRP Rules, the Panel grants the relief sought by the Complainant. The disputed domain name <cumminsperformanceparts.com> is ordered to be transferred to the Complainant.

Peter L. Michaelson

Sole Panelist

Date: March 31, 2015