



## DECISION

Core Matters, LLC v. DOMAIN ADMIN / ABSTRACT HOLDINGS INTERNATIONAL  
LTD

Claim Number: FA1801001768908

### PARTIES

Complainant is **Core Matters, LLC** (“Complainant”), represented by **Matthew L. Bycer** of **Bycer Law, PLC**, Arizona, USA. Respondent is **DOMAIN ADMIN / ABSTRACT HOLDINGS INTERNATIONAL LTD** (“Respondent”), represented by **Zak Muscovitch** of **Muscovitch Law P.C.**, Canada.

### REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<corematters.com>**, registered with **Uniregistrar Corp.**

### PANEL

The undersigned certify that they have acted independently and impartially and to the best of their knowledge have no known conflict in serving as Panelists in this proceeding.

Nicholas J.T. Smith and Hon. Charles K. McCotter, Jr., (Ret.), as Panelists and David P. Miranda, Esq., as chair Panelist.

### PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on January 25, 2018; the FORUM received payment on January 25, 2018.

On January 26, 2018, Uniregistrar Corp confirmed by e-mail to the FORUM that the <corematters.com> domain name is registered with Uniregistrar Corp and that Respondent is the current registrant of the name. Uniregistrar Corp has verified that Respondent is bound by the Uniregistrar Corp registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On February 2, 2018, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of February 26, 2018 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@corematters.com. Also on February 2, 2018, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on February 23, 2018.

On March 2, 2018, pursuant to Complainant's request to have the dispute decided by a three-member Panel, the FORUM appointed Nicholas J.T. Smith and Hon. Charles K. McCotter, Jr., (Ret.), as Panelists and David P. Miranda, Esq., as chair Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the FORUM has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual

notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2.

## RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

## PARTIES' CONTENTIONS

### A. Complainant

Complainant, Core Matters, LLC, is a consulting service based in Arizona. Complainant uses its CORE MATTERS mark to promote its products and services and established rights in the mark through registration with the United States Patent and Trademark Office ("USPTO") (*e.g.*, Reg. No. 5,379,906, registered Jan. 16, 2018). Complainant claims a date of first use of June 21, 2017. *See* Compl. Annex A. Complainant contends Respondent's <corematters.com> domain name is identical and confusingly similar to Complainant's mark because it merely appends the generic top-level domain ("gTLD") ".com" to the fully incorporated mark.

Complainant contends Respondent does not have rights or legitimate interests in the <corematters.com> domain name. Respondent is not commonly known by the disputed domain name. Further, Respondent is not using the disputed domain name in connection with any *bona fide* offering of goods or services or legitimate noncommercial or fair use. Instead, Respondent uses the <corematters.com> domain name to resolve to a website that features a message that the domain name is for sale and links that are unrelated to Complainant's business.

Complainant further contends Respondent registered and is using the domain name in bad faith. Respondent registered the domain name primarily for the

purpose of selling it to Complainant or its competitors. *See* Compl. Annexes B, C, and E. Further, Respondent has failed to use the domain name for any legitimate purpose. *See* Compl. Annex E.

#### B. Respondent

Respondent claims it registered the <corematters.com> domain name on January 5, 2017. Respondent does not dispute that Complainant registered the CORE MATTERS mark with the USPTO and thus has rights in the CORE MATTERS mark under the first prong.

Respondent contends Complainant failed to demonstrate that Respondent has no rights or legitimate interests in the disputed domain name. Respondent's registration of the at-issue domain name predates the first use of Complainant's CORE MATTERS mark in commerce, and predates any trademark registrations. *See* Resp. Annexes A and E. Further, Complainant initiated the offer to purchase the domain name from Respondent. *See* Resp. Annex B. Respondent claims its use of the <corematters.com> domain name to promote unrelated links for general advertising is a *bona fide* offering of goods or services or legitimate noncommercial or fair use. *See* Resp. Annex L.

Respondent contends Complainant failed to prove that Respondent registered and used the domain name in bad faith. Respondent's rights in the <corematters.com> domain name predate Complainant's trademark registration and use of its CORE MATTERS mark. *See* Resp. Annexes A and E. Further, Respondent did not register the at-issue domain name for the purpose of selling it to Complainant, as Complainant did not begin using the mark until after Respondent registered the disputed domain name, and there is nothing against a Respondent responding to a purchase offer and offering an asset for fair market value. *Id.* Additionally, the domain name is merely comprised of generic terms.

Respondent alleges that Complainant has engaged in reverse domain name hijacking by initiating this proceeding.

## FINDINGS

Complainant having failed to establish bad faith registration and use of the domain <corematters.com>, has not established all required elements of its claim, and thus its complaint must be denied.

## DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

### Registration and Use in Bad Faith

The Panel finds that Complainant failed to meet its burden of proof of bad faith registration and use under Policy ¶ 4(a)(iii), and thus the Panel need not consider the other elements. *See Tristar Products, Inc. v. Domain Administrator / Telebrands, Corp.*, FA 1597388 (FORUM Feb. 16, 2015) ("Complainant makes conclusory allegations of bad faith but has adduced no specific evidence that

warrants a holding that Respondent proceeded in bad faith at the time it registered the disputed domain name. Mere assertions of bad faith, even when made on multiple grounds, do not prove bad faith.”); *see also Chris Pearson v. Domain Admin / Automattic, Inc.*, FA 1613723 (FORUM Jul. 3, 2015) (finding that the complainant could not establish the respondent registered and used the disputed domain name in bad faith because it failed to present evidence that would support such a holding).

Respondent’s registration of the <corematters.com> domain name predates Complainant’s first claimed rights in the CORE MATTERS mark, and thus, Complainant cannot prove registration in bad faith per Policy ¶ 4(a)(iii), as the Policy requires a showing of bad faith registration and use. *See Platterz v. Andrew Melcher*, FA 1729887 (FORUM Jun. 19, 2017) (“Whatever the merits of Complainant’s arguments that Respondent is using the Domain Name in bad faith, those arguments are irrelevant, as a complainant must prove both bad faith registration and bad faith use in order to prevail.”); *see also Faster Faster, Inc. DBA Alta Motors v. Jeongho Yoon c/o AltaMart*, FA 1708272 (FORUM Feb. 6, 2017) (“Respondent registered the domain name more than a decade before Complainant introduced the ALTA MOTORS mark in commerce.”) Here, Respondent registered the domain name at least 6 months prior to Complainant’s claimed date of first use, therefore could not have entertained bad faith intentions respecting the mark because it could not have contemplated Complainant’s then non-existent rights in [the mark] at the moment the domain name was registered.

Further, Respondent claims that it did not register the at-issue domain name for the purpose of selling it to Complainant. A respondent can refute an argument of bad faith under Policy ¶ 4(b)(i) by offering evidence that it didn’t register the domain name with the intention of selling it to a complainant or its competitors. *See JCM Germany GmbH v. McClatchey Jr.*, D2004-0538 (WIPO Sept. 17, 2004) (holding that the respondent did not violate Policy ¶ 4(b)(i) by attempting to

sell the disputed domain name for profit because the respondent did not register the domain name with the intent to sell it to the complainant or one of its competitors). Respondent claims that, as Complainant did not begin using the mark until after Respondent registered the disputed domain name, and that there is nothing against a Respondent responding to a purchase offer and offering an asset for fair market value, that it did not register the domain name with the intention of selling it to Complainant.

Finally, Respondent alleges that its rights in the <corematters.com> domain name predate Complainant's rights in the CORE MATTERS trademark. Bad faith generally cannot be found where the respondent registered a disputed domain name prior to a complainant using a mark. *See Telecom Italia S.p.A. v. NetGears LLC*, FA 944807 (FORUM May 16, 2007) (determining the respondent could not have registered or used the disputed domain name in bad faith where the respondent registered the disputed domain name before the complainant began using the mark). Respondent registered the disputed domain name before Complainant first used its CORE MATTERS mark in commerce. *Compare* Resp. Annex E (Complainant's USPTO Registrations) *with* Resp. Annex. C (<corematters.com> WHOIS report). Therefore, the Panel finds Respondent did not register the disputed domain name in bad faith.

### **Reverse Domain Name Hijacking**

Respondent alleges that Complainant has acted in bad faith and is engaging in reverse domain name hijacking by initiating this dispute. The Panel finds that Complainant has not engaged in reverse domain name hijacking. *See ECG European City Guide v. Woodell*, FA 183897 (FORUM Oct. 14, 2003) ("Although the Panel has found that Complainant failed to satisfy its burden under the Policy, the Panel cannot conclude on that basis alone, that Complainant acted in bad faith."); *see also Church in Houston v. Moran*, D2001-0683 (WIPO Aug. 2,

2001) (noting that a finding of reverse domain name hijacking requires bad faith on the complainant's part, which was not proven.)

## DECISION

Having not established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **DENIED**.

Accordingly, it is Ordered that the <corematters.com> domain name **REMAIN WITH** Respondent.

A handwritten signature in black ink, appearing to read "David P. Miranda". The signature is written in a cursive style with a large initial "D".

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Nicholas J.T. Smith and Hon. Charles K. McCotter, Jr., (Ret.), as Panelists  
and David P. Miranda, Esq., as chair Panelist

Dated: March 12, 2018