

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. kimwoori
Case No. D2023-0358

1. The Parties

The Complainant is Archer-Daniels-Midland Company, United States of America, represented by Innis Law Group LLC, United States of America.

The Respondent is kimwoori, Republic of Korea.

2. The Domain Name and Registrar

The disputed domain name <adm-korea.com> is registered with Whois Corp. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2023. On January 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 27, 2023, 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 (Unknown), and from the Respondent identified by reference to Annex 1 to the Complaint (“Whois Domain Admin”), and contact information in the Complaint. The Center sent an email communication to the Complainant on February 14, 2023, 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 amendment to the Complaint on February 14, 2023.

On February 14, 2023, the Center notified the Parties in both English and Korean that the language of the registration agreement for the disputed domain name is Korean. On February 21, 2023, the Complainant requested for English to be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint, together with the amendment to the 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 February 22, 2023. In accordance with the Rules,

paragraph 5, the due date for Response was March 14, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 16, 2023.

The Center appointed Moonchul Chang as the sole panelist in this matter on March 23, 2023. 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

Since the Complainant was founded in 1902, it has grown as an international company in the nutrition industry with over 38,000 employees serving more than 200 countries around the world. The Complainant is a market leader in various business areas and maintains its global presence online, via its various websites.

The Complainant owns numerous trademark registrations for the ADM trademark in the United States, Republic of Korea, India, Canada, and many other countries, for example, the United States trademark ADM (Reg. No. 1386430, registered on March 18, 1986) and the Republic of Korea trademark ADM (Reg. No. 4519980001056, registered on August 27, 1998)

In addition, the Complainant holds the domain name <adm.com> under which the official website of the Complainant is available. The Complainant holds several other domain names incorporating the ADM trademark. The Complainant advertises and sells its services through its <adm.com> domain name.

The disputed domain name was registered on September 13, 2022. Although the disputed domain name is currently inactive, the Respondent was using the Complainant's mark and logo on its own website to which the disputed domain name resolved.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

- (a) The disputed domain name is identical or confusingly similar to its trademark. The disputed domain name incorporates the Complainant's trademark ADM in its entirety. The addition of the hyphenated
- (b) "-korea" suffix along with the generic Top-Level Domain ("gTLD") ".COM" would not prevent a finding of the confusing similarity.
- (c) The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has neither authorized nor given its consent to the Respondent to register or use the disputed domain name. The Respondent has no rights or legitimate interests in the ADM Mark and the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. Rather, the Respondent used the domain to tarnish the ADM Mark and fraudulently to obtain website visitors' personal and bank information. In addition, the Respondent has not been commonly known by the names ADM or ADM-KOREA.COM.
- (d) The disputed domain name was registered and is being used in bad faith. The Respondent was well aware of the ADM Mark and ADM's rights in its ADM Mark prior to registering the ADM-KOREA.COM domain on September 13, 2022. Further, its copying of ADM's logo and language from the Complainant's website supports the finding that the disputed domain name was registered in bad faith and with knowledge of ADM's prior rights and reputation. In addition, the Respondent was using the ADM Mark, ADM name, and language from the Complainant's website to cause a likelihood of

confusion with the Complainant's ADM Mark as to the source of the website and to fraudulently obtain personal information and bank information from website visitors.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary Issue: Language of Proceedings

According to paragraph 11 of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement unless the Panel determines otherwise or otherwise agreed to by the Parties. In this present case, the Registrar confirmed that the language of the Registration Agreement for the disputed domain name is Korean.

However, the Complaint was filed in English. The Complainant requests that the language of proceeding be English. Here, the Panel observes that the Center, for its part, has communicated with the Parties in a bilingual manner in both English and Korean concerning all of the various steps and requirements thus far in the administrative proceeding. The spirit of paragraph 11 of the Rules is to ensure fairness in the selection of the language of the proceeding by giving full consideration, *inter alia*, to the Parties' level of comfort with each language, expenses to be incurred, and possibility of delay in the proceeding in the event translations are required and other relevant factors. On the other hand, the Respondent has not responded to the issue of the language of the proceeding. The Panel would have accepted a Response in either English or Korean, but none was submitted.

Additionally, the Panel notes that the disputed domain name is constructed in Latin letters, featuring the English term "korea", and was used to host a website that featured both English and Korean languages.

In consideration of the above circumstances and in the interest of fairness to both Parties, the Panel concludes, in view of all of the above, that it accepts the Complaint in English, and that it will render this Decision in English.

6.2. Substantive Issues

Under paragraph 4(a) of the Policy, the Complainant must demonstrate that the three elements enumerated in paragraph 4(a) of the Policy have been satisfied. These elements are that:

- (i) the disputed domain name is identical or confusingly similar to the Complainant's trademark or service mark; and
- (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 and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name includes the Complainant's trademark ADM in its entirety together with addition of hyphenated "-korea". The Panel's assessment of identity or confusing similarity involves a straightforward comparison between the disputed domain name and the textual components of the relevant mark. Adding such term does not prevent a finding of confusing similarity and does not change the overall impression of the disputed domain name as being confusingly similar to the Complainant's trademark. (Section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Numerous UDRP panels have held that where a domain name incorporates a complainant's trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, it is sufficient to consider the domain name "confusingly similar" to that mark within the meaning of the Policy. (Section 1.7 of [WIPO Overview 3.0](#)). In addition, the gTLD ".com" is disregarded under the confusing similarity test. (Section 1.11.1, [WIPO Overview 3.0](#)).

Accordingly, the Panel finds that the first element under paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of production of evidence shifts to the Respondent. (Section 2.1 of [WIPO Overview 3.0](#)).

First, the Complainant contends that it has not authorized the Respondent to use the trademark ADM or to register any domain names incorporating it. Nonetheless, the Respondent used the disputed domain name to represent to website visitors that it was affiliated with ADM. However, the Respondent did not reply to the Complaint.

Secondly, the Complainant contends that the Respondent was copying of the Complainant's website on its fraudulent website and its use of the ADM Mark and logo throughout its website to obtain personal and bank information from website visitors. There is no evidence presented to the Panel that the Respondent has used, or has made demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods or services or is making a legitimate noncommercial or fair use of the disputed domain name. Here, the Respondent failed to come forward with any appropriate allegations or evidence that might demonstrate its rights or legitimate interests in the disputed domain name to rebut the Complainant's *prima facie* case.

Thirdly, there is no evidence to suggest that the Respondent has been commonly known by the disputed domain name. In the consideration of the above circumstances the Panel finds that the Complainant has made out a *prima facie* case and the Respondent failed to come forward with any appropriate evidence that might rebut the Complainant's *prima facie* case.

Accordingly, the Panel concludes that the Complainant has satisfied the second element under paragraph 4(a) of the Policy in the present case.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the disputed domain name "has been registered and is being used in bad faith". Thus, for the Complaint to succeed, a UDRP Panel must be satisfied that a domain name has been registered and is being used in bad faith. These requirements are conjunctive; each must be proven or the Complaint fails. In this proceeding, the Panel needs look no further than the Complaint to determine that the Complainants have established that the Respondent registered the disputed domain name in bad faith.

First, the Complainant obtained the registration of the United States and Republic of Korea trademarks much earlier than the Respondent registered the disputed domain name in 2022. Having considered that the Complainant's trademark ADM is well known, it is highly likely that the Respondent has been aware of the reputation of the ADM Mark when registering a confusingly similar domain name that full incorporates the Complainant's mark plus the geographical term "Korea". Thus, it is considered bad faith that the Respondent deliberately chose the disputed domain name to create a likelihood of confusion with the Complainant's trademark so as to create a false association or affiliation with the Complainant.

Next, the Complainant contends that the Respondent previously used the disputed domain name to display ADM's Mark and language from its website to cause a likelihood of confusion with the Complainant's ADM Mark as to the source of the website and to obtain personal and bank information from website visitors.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. (Section 3.1 of the [WIPO Overview 3.0](#)). In addition, regarding the fact that the disputed domain name is currently inactive, it is well established that the lack of use of the disputed domain does not prevent a finding of bad faith use under the doctrine of passive holding. (Section 3.3 of the [WIPO Overview 3.0](#)). Here, given the totality of the circumstances, particularly the prior use of the disputed domain name to apparently impersonate the Complainant's website, the Respondent's lack of participation in the proceeding, and the Respondent's use of a privacy service to mask its details on the publicly-available Whois, the Panel agrees that the current passive holding of the disputed domain name does not prevent a finding of bad faith.

Accordingly, the Panel concludes that the Complainant has satisfied the third element under paragraph 4(a) of the Policy in the present case.

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 <adm-korea.com> be transferred to the Complainant.

/Moonchul Chang/

Moonchul Chang

Sole Panelist

Date: April 6, 2023