

## **ADMINISTRATIVE PANEL DECISION**

Archer-Daniels-Midland Company v. Registration Private, Domains By Proxy, LLC / Chantelle Columbus  
Case No. D2022-1656

### **1. The Parties**

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

The Respondent is Registration Private, Domains By Proxy, LLC, United States / Chantelle Columbus, Canada.

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

The disputed domain name <archerdanielsmidlands.com> is registered with GoDaddy.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 5, 2022. On May 6, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 9, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 10, 2022, 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 amended Complaint on May 12, 2022.

The Center verified that the Complaint together with the amended 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 May 12, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 2, 2022.

The Center appointed John Swinson as the sole panelist in this matter on June 10, 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, Archer-Daniels-Midland Company, is a multinational food processing and commodities trading corporation founded in 1902 and headquartered in Chicago, Illinois. The Complainant was originally founded as Daniels Linseed Co. before changing its name to Archer-Daniels-Midland Company in 1923.

The Complainant owns numerous trademark registrations for ADM in the United States for a wide range of goods and services. Example trademark registrations owned by the Complainant include:

- ADM, United States Reg. No. 1,386,430, registered on March 18, 1986;
- ADM, United States Reg. No. 2,301,968, registered on December 21, 1999; and
- e-ADM, United States Reg. No. 3,344,263, registered on November 27, 2007.

The Respondent did not file a response, so little information is known about the Respondent.

The disputed domain name was registered on March 23, 2022.

The disputed domain name does not resolve to a developed website. Currently, it resolves to a parking page generated by the Registrar. The disputed domain name has been used to send fraudulent emails to potential employees of the Complainant, soliciting personal information and asking for money to progress job applications with the Complainant.

#### **5. Parties' Contentions**

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

In summary, the Complainant made the following submissions.

The Complainant's ADM trademark is protected and famous in many countries.

The Complainant is known as both ADM and Archer-Daniels-Midland.

The Complainant has been subject to many fraudulent attacks using domain names that incorporate the Complainant's ADM trademark, targeted at the Complainant's employees, potential employees, and customers. The Complainant has been successful in many prior cases under the Policy.

The disputed domain name is similar in meaning or connotation to the Complainant's ADM trademark. The disputed domain name displays the entire company name of the Complainant, which is typically abbreviated to ADM.

The Complainant has not licensed or permitted the Respondent to use its ADM Mark or to register the disputed domain name. The Respondent is not and has never been commonly known, either as a business, an individual, or an organization, by the disputed domain name. Any claimed rights or legitimate interests in the disputed domain name is negated by the Respondent's impersonation of the Complainant's personnel and attempt to harvest personal information and fraudulently mislead victims. The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain, but rather, the Respondent is attempting to misleadingly divert applicants or to tarnish the trademark or service mark at issue.

The Respondent is using the disputed domain for the primary purpose of attempting to harvest personal information for profit, to mislead unsuspecting individuals interested in employment with the Complainant to the Respondent's own website, and to conduct an employment scheme designed to confuse, mislead, and harm victims.

The Panel notes that the Complainant was difficult to follow at times, and it was hard for the Panel to determine when the Complainant was referring to the present circumstances or prior decisions. Accordingly, the above summary may not accurately capture the Complainant's submissions.

## **B. Respondent**

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

## **6. Discussion and Findings**

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- (i) the disputed domain name is identical or confusingly similar to a 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 and is being used in bad faith.

The onus of proving these elements is on the Complainant.

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

### **A. Identical or Confusingly Similar**

Paragraph 4(a)(i) of the Policy provides that the Complainant must establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

As set out above, the Complainant owns trademark registrations for ADM. The Complainant's ADM trademarks are well-known. It does not appear that the Complainant owns any trademark registrations for "Archer-Daniels-Midland", which is the Complainant's corporate name.

Accordingly, two issues arise. First, is the disputed domain name confusingly similar to the ADM trademark? If not, does the Complainant have trademark rights under the Policy in "Archer-Daniels-Midland"?

The Complainant argues that "archerdanielsmidlands" is similar in meaning or connotation to ADM. This is because, according to the Complainant, the disputed domain name displays the entire company name of the Complainant, which is typically abbreviated to ADM. Further, according to the Complaint, the Complainant is known as both ADM and Archer-Daniels-Midland.

The Complainant also relies on the prior case of *Archer-Daniels-Midland Company v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Buccaneer Josh, .buccaneer computer systems*, WIPO Case No. [D2021-3577](#), that decided that the domain name <archer-daniel-midland.com> was confusingly similar to the ADM trademark.

In the present case, while the Panel notes that the abbreviated form of “Archer-Daniels-Midland” is registered as the ADM trademark, the Panel takes a different path, and finds that the Complainant’s corporate name is well-known and long-standing associated with the Complainant’s products such that the Complainant has common law rights in ARCHER-DANIELS-MIDLAND for the purposes of the Policy. The Panel also finds that the disputed domain name is confusingly similar to ARCHER-DANIELS-MIDLAND, with the only differences being a “s” at the end of the disputed domain name and the absence of hyphens in the disputed domain name.

The Complainant succeeds on the first element of the Policy in relation to the disputed domain name.

## **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent’s] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant.

Previous UDRP panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden of production will shift to the respondent to rebut that *prima facie* case.

The Complainant asserts that the Respondent is not and has never been commonly known, either as a business, an individual, or an organization, by the disputed domain name. The Complainant states that any claimed rights or legitimate interests in the disputed domain name are negated by the Respondent’s impersonation of the Complainant’s personnel and attempt to harvest personal information and fraudulently mislead victims. Additionally, the Complainant asserts that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain, but rather, the Respondent is attempting to misleadingly divert applicants or to tarnish the trademark or service mark at issue. The Complainant states that the Respondent is using the disputed domain for the primary purpose of attempting to harvest personal information for profit, to mislead unsuspecting individuals interested in employment with the Complainant to the Respondent’s own website (although the Panel notes that there is no evidence of the Respondent having a website at the disputed domain name), and to conduct an employment scheme designed to confuse, mislead, and harm victims. The Complainant states that the Complainant has not licensed or permitted the Respondent to use its ADM Mark or to register the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the disputed domain name. None of the circumstances listed in paragraph 4(c) apply in the present circumstances. Accordingly, the Panel finds the Respondent has not established rights or any legitimate interests in the disputed domain name.

The Complainant succeeds on the second element of the Policy in relation to the disputed domain name.

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

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent has registered and used the disputed domain name in bad faith.

In the present circumstances, the fact that the disputed domain name is being used to send fraudulent emails to job applicants that impersonate the Complainant's personnel is evidence of bad faith.

The Respondent's conduct demonstrates the Respondent's knowledge of the Complainant. By registering the disputed domain name that includes the Complainant's name, and then by using the disputed domain name to send emails which impersonate the Complainant, demonstrates that the Respondent specifically knew of and targeted the Complainant. *L.M. Waterhouse & Co., Inc. v. Scott Myers, Intersearch Global*, WIPO Case No. [D2021-0962](#); *Fédération Française de Tennis (FFT) v. Daniel Hall, dotCHAT, Inc.*, WIPO Case No. [D2016-1941](#); *Akzo Nobel N.V. v. Privacy Service Provided by Withheld for Privacy ehf / jennifer alonso, jennyart*, WIPO Case No. [D2021-4244](#).

The Respondent's use of the disputed domain name appears to be part of a fraudulent or "phishing" scheme which is manifestly evidence of bad faith – see *Australia and New Zealand Banking Group Limited v. Bashar Ltd*, WIPO Case No. [D2007-0031](#), and the cases referred to in that case, for further analysis of why "phishing" activities amount to use in bad faith.

The Complainant succeeds on the third element of the Policy in relation to the disputed domain name.

### **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 <archerdanielsmidlands.com> be transferred to the Complainant.

*/John Swinson/*

**John Swinson**

Sole Panelist

Date: June 23, 2022