

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. Jim Sengooba Case No. D2023-3142

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 Jim Sengooba, Uganda.

2. The Domain Name and Registrar

The Disputed Domain Name <archerdaniel.com> (the “Disputed Domain Name”) is registered with Cosmotown, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 20, 2023. On July 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On July 22, 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 contact information in the Complaint. The Center sent an email communication to the Complainant on July 24, 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 July 25, 2023.

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 August 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 24, 2023.

The Center appointed Nick J. Gardner as the sole panelist in this matter on August 31, 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

The Complainant, Archer-Daniels-Midland Company, is a multinational food processing and commodities trading corporation founded in 1902 and headquartered in Chicago, Illinois, United States. The Complainant was originally founded as Archer-Daniels Linseed Company before changing its name to Archer-Daniels-Midland Company in 1923. It has over 30,000 employees and does business in more than 140 countries around the world. It had global revenues of over USD 64 billion in 2020.

The Complainant owns numerous trademark registrations for the acronym ADM in the United States for a wide range of goods and services. See for example United States Registration No. 1,386,430, registered on March 18, 1986. These trademarks are referred to as the “ADM trademark” in this decision.

The Disputed Domain Name was registered on July 4, 2023. It does not resolve to an active website. The filed evidence establishes that the Disputed Domain Name has been used to send fraudulent emails to customers of the Complainant.

5. Parties' Contentions

A. Complainant

In summary, the Complainant made the following submissions. The 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 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 ADM trademark. The Disputed Domain Name displays a substantial part of 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 trademark 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. 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 defraud customers of the Complainant.

The fraudulent use of the Disputed Domain Name amounts to registration and use in bad faith.

B. Respondent

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

6. Discussion and Findings

To succeed, in accordance with paragraph 4(a) of the Policy, the Complainant must satisfy the Panel that:

- (i) the Disputed Domain Name is identical with 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.

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 the ADM trademark. The ADM trademark is 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 “archerdaniel” is similar in meaning or connotation to ADM. This is because, according to the Complainant, the Disputed Domain Name displays a substantial part of the entire company name of the Complainant, which is typically abbreviated to ADM. Further, according to the Complainant, the Complainant is known as both ADM and “Archer-Daniels-Midland”.

The Complainant also relies on various prior cases that decided that the domain name <archer-daniel-midland.com> was confusingly similar to the ADM trademark such as *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](#).

In the present case, while the Panel notes that the acronym formed by the initial letters of “Archer-Daniels-Midland” is registered as the ADM trademark, the Panel doubts that the acronym ADM can be said to be “similar” to the words “Archer-Daniels-Midland” given that the relevant test involves a side by side comparison of the two terms. The fact that one term is derived from the other is not in this Panel’s opinion sufficient to amount to being “similar” if the side by side comparison does not support such a finding. However the Panel finds that the Complainant’s corporate name is well-known and has a long-standing association with the Complainant’s products, and has been used as such on a very substantial international basis for many years, such that the Complainant has common law trademark rights in the term ARCHER-DANIELS-MIDLAND for the purposes of the Policy.

In addition, were there any doubt about this, it is relevant that the Respondent itself thought it worthwhile to use the term “archerdaniel” in the Disputed Domain Name. As the panel noted in *NEOVIA, Hi-Nutrients International Ltd. v. WhoisGuard Protected, WhoisGuard, Inc. / Deniz Hus* WIPO Case No. [D2019-0600](#): “The Respondent did not provide arguments to the contrary; rather, in the Panel’s view, the Respondent cannot dispute that, given it deliberately targeted the source identifier in an apparent fraud attempt. Such targeting of the Complainants is sufficient to establish limited trademark rights in the HI-NUTRIENTS trademark for the purposes of the Policy. See *PEMF Supply, LLC v. Domain Administrator, See PrivacyGuardian.org / Gregory Lewis, American Healthcare Foundation*, WIPO Case No. [D2019-0235](#) (‘in light of the use of the PEMF SUPPLY mark that was submitted in this proceeding, the targeting of Complainant by Respondent is sufficient to establish Complainant has limited unregistered trademark rights in the PEMF SUPPLY mark for the purposes of the Policy’). See also *Greenspring Associates, Inc. v. Lisa*

Knowles, Victoria capital pty, WIPO Case No. [D2019-0265](#): “To that extent, Complainant has in fact used the domain name <gspring.com> as a source identifier for its services. One person who cannot dispute that fact is Respondent, who (as is discussed below) deliberately targeted that source identifier (<gspring.com>) to attempt to perpetrate a fraud via confusion. The Domain Name differs from the GSPRING mark only to the extent that the Domain Name replaces the ‘l’ with an ‘i’. The visual similarity between the ‘i’ and the ‘l’ – especially when the font is small – is obvious.”

Accordingly, the Panel is satisfied on the evidence as filed that the Complainant has shown it has unregistered trademark rights in the term “ARCHER-DANIELS-MIDLAND” as a source identifier for its services. The Panel will refer to the “ARCHER-DANIELS-MIDLAND trademark” in the remainder of this decision in relation to such rights.

The Panel finds the Disputed Domain Name is confusingly similar to the ARCHER-DANIELS-MIDLAND trademark. Previous UDRP panels have consistently held that domain names are identical or confusingly similar to a trademark for purposes of the Policy “when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other terms in the domain name” (*Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). The panel considers “archerdaniel” to be a confusingly similar approximation to the ARCHER-DANIELS-MIDLAND trademark.

It is also well established that the Top-Level Domain (“TLD”), in this case “.com”, is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) at section 1.11.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trademark and hence the first condition of paragraph 4(a) of the Policy has been fulfilled.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the 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 domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

None of these apply in the present circumstances. The Complainant has not authorised, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the trademark ARCHER-DANIELS-MIDLAND or “archerdaniel”. The Complainant has prior rights in the ARCHER-DANIELS-MIDLAND trademark, which precede the Respondent’s acquisition of the Disputed Domain Name. The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name (see, for example, *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#); *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#)).

Moreover, the fraudulent use of the Disputed Domain Name can never confer rights or legitimate interests on the Respondent.

The Panel finds that the Respondent has failed to produce any evidence to establish its rights or legitimate interests in the Disputed Domain Name. Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the Disputed Domain Name and the second condition of paragraph 4(a) of the Policy has been fulfilled.

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 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 elements clearly derived from the Complainant's ARCHER-DANIELS-MIDLAND trademark, 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. See *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](#).

Accordingly, the Panel finds that the Disputed Domain Name has been registered and is being used in bad faith and the third condition of paragraph 4(a) of the Policy has been fulfilled.

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 <archerdaniel.com> be transferred to the Complainant.

/Nick J. Gardner/

Nick J. Gardner

Sole Panelist

Date: September 14, 2023