

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. Michael Gillispie
Case No. D2022-0631

1. The Parties

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

The Respondent is Michael Gillispie, United States.

2. The Domain Name and Registrar

The disputed domain name <ad8m.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 22, 2022. On February 23, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 23, 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 February 24, 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 amendment to the Complaint on February 28, 2022.

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 March 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 21, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on March 23, 2022.

The Center appointed William R. Towns as the sole panelist in this matter on March 30, 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 is Archer-Daniels-Midland Company, founded in the United States in 1902, and widely known as “ADM”. The Complainant is a well-recognized international, multi-billion dollar company, with over 30,000 employees in 140 countries, and generating revenues in excess of USD 64 billion. The Complainant participates in a wide range of business activities, including food and ingredients, printing and publishing, financial services, transportation, and research and development. The Complainant operates a website at “www.adm.com”, transacting business with customers and providing trading platforms.

The Complainant for the better part of a century has traded under the its “ADM” name, securing registrations of its ADM trademark in multiple jurisdictions, including the United States, Canada, and China:

- ADM, US Reg. No. 1,386,430, applied for April 11, 1985, and registered March 18, 1986 (first use 1923);
- ADM, US Reg. No. 2,766,613, applied for October 25, 2002, and registered September 23, 2003;
- ADM, US Reg. No. 2,301,968, applied for September 29, 1998, and registered December 21, 1999;
- ADM, US Reg. No. 2,307,492, applied for November 25, 1998, and registered January 11, 2000;
- ADM, US Reg. No. 2,430,864, applied for June 10, 1999, and registered February 27, 2001;
- ADM, Canadian Trademark Reg. No. TMA707334, registered February 13, 2008; and
- ADM, Chinese Trademark Reg. No. 17086938, registered August 21, 2016.

The disputed domain name was registered by the Respondent on January 21, 2022, according to the Registrar’s Whois records. The disputed domain name since has been used in an email address seeking to impersonate the Complainant, the Complainant’s company, and the Complainant’s employees, submitting fraudulent invoices with falsified wire transfer instructions and seeking payments of EUR 925,473.84.

5. Parties’ Contentions

A. Complainant

The Complainant explains that it filed the Complaint after receiving notice that the Respondent had attempted to fraudulently divert funds intended for ADM. According to the Complainant, the Respondent sought to impersonate the Complainant by creating the email address [...]@ad8m.com, which the Respondent then used in an attempt to obtain a wire transfer of EUR 924,473.84 from a company with which the Complainant works. The fraudulent email address displayed the Complainant’s emblem, was directed to the Complainant’s customer, and included a fraudulent invoice with wire transfer instructions.

The Complainant remarks it has been subjected to a large uptick in cases involving fraudulent job offers and diverted funds in recent years, referring among other decisions to *Archer-Daniels-Midland Company v. Bungeteam*, WIPO Case No. D2021-2710; *Archer-Daniels-Midland Company v. Hei Ze Shang Zi*, WIPO Case No. D2021-1865; *Archer-Daniels-Midland Company v. Contact Privacy Inc. Customer 1248875609*, *Contact Privacy Inc. Customer 1248875609 / Walt Dinkelacker*, WIPO Case No. D2021-0296; and *Archer-Daniels-Midland Company v. Name Redacted*, WIPO Case No. D2016-1618.

The Complainant submits that the disputed domain name is identical or confusingly similar to the Complainant’s registered ADM mark, stating that it replicates the three letters of the ADM mark in the same order and likely will be perceived by most consumers as the ADM acronym. The Complainant emphasizes that it owns numerous trademark registrations worldwide for its now famous ADM mark, adopted and continuously in use since as early as 1923.

The Complainant maintains that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant upon information and belief represents that the Respondent has not been commonly known by the disputed domain name, whether as an individual, business, or other organization, and has not been licensed or otherwise authorized to use the disputed domain name. The Complainant further submits that the Respondent is not making a legitimate noncommercial or other fair use of the disputed domain name without intent for commercial gain, nor using the disputed domain name in connection with a *bona fide* offering of goods or services, but instead is attempting misleadingly to divert consumers or tarnish the trademark or service mark at issue.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant reiterates that the Respondent registered and is using the disputed domain name to impersonate or spoof the Complainant's ADM mark for fraudulent purposes, maintaining that the Respondent has attempted to mislead those who work with the Complainant into believing that an outstanding payment is owed to the Complainant, when in actuality the funds would be transferred to the Respondent.

B. Respondent

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

6. Discussion and Findings

A. Scope of the Policy

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. D2002-0774. Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of "the abusive registration of domain names", also known as "cybersquatting". *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. D2000-0187. See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169-177. The term "cybersquatting" is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the complainant prove each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests with respect to the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Cancellation or transfer of the domain name is the sole remedy provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets forth four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy, in turn, identifies three means through which a respondent may demonstrate rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, prior UDRP panels have recognized that this

could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the view is that the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in the domain name, once the complainant has made a *prima facie* showing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. D2000-0270.

B. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the Complainant’s ADM mark, in which the Complainant has established rights through registration and use. In considering identity and confusing similarity, the first element of the Policy serves essentially as a standing requirement.¹ The threshold inquiry under the first element of the Policy involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name.

The Complainant’s ADM mark is recognizable in the disputed domain name.² The first element test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.³ In this instance, the Respondent’s interspacing in the disputed domain name of the number “8” between the letters “a d” and “m” (“ad8m”) does not serve to dispel the confusing similarity of the disputed domain name to the Complainant’s ADM mark, and is evocative of typosquatting. Moreover, the use of the disputed domain name for an email address seeking to impersonate the Complainant supports a finding of confusing similarity. The generic Top-Level Domain (“gTLD”) generally is disregarded in determining identity or confusing similarity under paragraph 4(a)(i) of the Policy.⁴

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

As noted above, once the complainant makes a *prima facie* showing that the requirements are met under paragraph 4(a)(ii) of the Policy, paragraph 4(c) shifts the burden of production to the respondent to come forward with evidence of rights or legitimate interests in a domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. The disputed domain name is confusingly similar to the Complainant’s well-known ADM mark, and it is undisputed that the Respondent has not been authorized to use the Complainant’s mark. The record nonetheless reflects that the Respondent registered the disputed domain name, misappropriating the Complainant’s well-known ADM mark, impersonating the Complainant, and submitting fraudulent invoices seeking to obtain payments of EUR 925,473.84.

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in a domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s use of, or demonstrable preparations to use, the 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 has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or

¹ See WIPO Overview 3.0, section 1.7.

² *Id.*

³ *Id.*

⁴ See WIPO Overview 3.0, section 1.11.2 and cases cited therein.

(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.

It is evident from the record that the Respondent knew of the Complainant and had the Complainant's ADM mark firmly in mind when registering the disputed domain name. Having regard to all relevant circumstances in this case, the Panel finds that the Respondent has neither used nor undertaken demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

Further, and for the reasons discussed above, the Panel holds that the Respondent is neither making a legitimate noncommercial or fair use of the disputed domain name. There is no indication in the record that the Respondent has ever been commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. In short, nothing in the record before the Panel supports a finding of the Respondent's rights or legitimate interests in respect of the disputed domain name.

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. D2004-0230.

For the reasons discussed under this and the preceding heading, the Panel considers that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(a)(iii) of the Policy. The Respondent's registration and use of the disputed domain name clearly is demonstrative of bad faith. As previously noted, the Respondent unquestionably had the Complainant's ADM mark in mind when registering the disputed domain name, which the Respondent egregiously exploited in a deliberate, blatant and unlawful attempt to defraud the Complainant.

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 <ad8m.com> be transferred to the Complainant.

/William R. Towns/

William R. Towns

Sole Panelist

Date: April 12, 2022