

ADMINISTRATIVE PANEL DECISION

Chicago Mercantile Exchange Inc., CME Group Inc. v. Privacy service
provided by Withheld for Privacy ehf / yang zhi
Case No. D2022-1323

1. The Parties

The Complainants are Chicago Mercantile Exchange Inc. and CME Group Inc., United States of America (“United States”), represented by Norvell IP llc, United States.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / yang zhi, Malaysia.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 12, 2022. On April 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 13, 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 April 14, 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 April 20, 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 April 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 13, 2022.

The Center appointed Miguel B. O'Farrell as the sole panelist in this matter on June 14, 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 Chicago Mercantile Exchange Inc. (CME) is one of the world's leading financial institutions, and part of the Complainant CME Group. Originally founded in 1898, CME began using the CME name in 1919. The Complainant CME Group is the world's largest and most diverse financial exchange, and was formed in 2007 after CME and the Chicago Board of Trade merged together.

The Complainants' operations extend internationally with offices in the United States, Canada, Brazil, the United Kingdom, Ireland, Singapore, Hong Kong, China, the Republic of Korea, India and Japan.

The Complainants own numerous trademark registrations for CME and CME GROUP (collectively the CME Marks) in several jurisdictions worldwide, including the following:

United States Trademark Registration No. 1,085,681 CME, registered on February 14, 1978 in Int. class 36;

United States Trademark Registration No. 3,084,640 CME, registered on April 25, 2006 in Int. classes 9 and 42 and

United States Trademark Registration No. 5,842,697 CME, registered on August 27, 2019 in Int. class 36.

The Complainants maintain Internet websites at domain names incorporating the CME Marks. The domain name <cme.com> was originally registered in 1994 and redirects users to the CME Group primary homepage at "www.cme.com/company".

The Respondent registered the disputed domain name <cmegro.top> on October 14, 2021 which resolves to a website offering similar services to those offered by the Complainants, including a link to the website of CME Group.

5. Parties' Contentions

A. Complainant

The Complainants and their predecessors began using the CME Marks not only in the United States, but also in many other countries well before the Respondent registered the disputed domain name in 2021.

In 2021, the Complainants and their related entities generated revenues in excess of USD 4.7 billion. In 2021, fourth quarter average rate daily volume was 20.5 million contracts traded through the Complainant's exchanges.

The fame of the CME Marks has been previously recognized in many UDRP panel decisions.

The Complainant claims that the disputed domain name is confusingly similar with the CME Marks and particularly the trademark CME in which the Complainants have rights and that the Respondent has no rights or legitimate interests in the disputed domain name, which was registered and is being used in bad faith.

More specifically, the Complainant has not licensed the Respondent to use its trademark and there is no relationship between the Parties that would justify the registration of the disputed domain name by the Respondent.

Nothing suggests that the Respondent is commonly known by the disputed domain name.

The Respondent registered the disputed domain name at a time when the CME Marks had already gained international status as well known marks. Consequently, the Respondent could not have been unaware of the Complainant and its business when registering the disputed domain name.

The Respondent registered the disputed domain name to trade-off the goodwill and reputation of the Complainant's CME Marks and create a false association, sponsorship or endorsement with or of the Complainant and has therefore acted with "opportunistic bad faith".

Finally, the Complainant requests the Panel to issue a decision ordering that the disputed domain name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the disputed domain name, the Complainant must prove each of the following, namely that:

- (i) the disputed domain name is identical or confusingly similar with a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

A. Identical or Confusingly Similar

As set forth in section 1.7 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") the standing test for confusing similarity involves a reasoned but relatively straightforward comparison between the trademark and the disputed domain name to determine whether the disputed domain name is confusingly similar with the trademark. The test 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.

The Panel considers that the disputed domain name is confusingly similar with the Complainant's CME trademark.

The disputed domain name <cmegro.top> incorporates the Complainant's trademark CME in its entirety with the addition of "gro", which does not prevent a finding of confusing similarity.

The ".top" generic Top-Level Domain ("gTLD") is viewed as a standard registration requirement and is generally disregarded under the first element confusing similarity test, as set forth in section 1.11 of [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark CME in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy are fulfilled.

B. Rights or Legitimate Interests

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

- (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 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
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established, as it is put in section 2.1 of [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the domain name. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

There is no evidence in the present case that the Respondent has been commonly known by the disputed domain name, enabling it to establish rights or legitimate interests therein.

Furthermore, there is no evidence in the file to prove any of the circumstances mentioned in paragraph 4(c) of the Policy, nor any other circumstances to suggest that the Respondent has rights or legitimate interests in the disputed domain name.

Likewise, and as further discussed under section 6.C of this decision, it does not seem that the Respondent is making any legitimate noncommercial or fair use of the disputed domain name, but rather that it intends to use the disputed domain name for the purpose of deriving unfair monetary advantage by confusing Internet users and leading them to believe that the site to which the disputed domain name relates is an official site of the Complainant.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not responded and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the disputed domain name (*Telstra Corporation Limited. v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)).

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the requirements of paragraph 4(a)(ii) of the Policy have been fulfilled.

C. Registered and Used in Bad Faith

The Panel is satisfied that the Respondent must have been aware of the Complainant's trademark CME mentioned in paragraph 4 above (Factual Background) when it registered the disputed domain name on October 14, 2021.

In accordance with section 3.1.4 of [WIPO Overview 3.0](#), the Panel considers that the inclusion of the Complainant's CME trademark in the disputed domain name creates a presumption of bad faith.

The Respondent when registering the disputed domain name has targeted the Complainant's trademark CME with the intention to confuse Internet users and capitalize on the fame of the Complainant's trademark for its own monetary benefit.

The fact that there is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of the disputed domain name is also a significant factor to consider that the disputed domain name was registered in bad faith (as stated in section 3.2.1 of [WIPO Overview 3.0](#)).

The Panel finds that the Respondent has registered and is using the disputed domain name intentionally to attempt to attract for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's CME trademark as to the source, sponsorship, affiliation, or endorsement for services similar to those offered by the Complainant. This amounts to bad faith under paragraph 4(b)(iv) of the Policy.

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 <cmegro.top> be transferred to the Complainant.

/Miguel B. O'Farrell/

Miguel B. O'Farrell

Sole Panelist

Date: June 28, 2022