

ADMINISTRATIVE PANEL DECISION

Archer-Daniels-Midland Company v. makoto nakayama
Case No. D2023-1020

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 makoto nakayama, Japan.

2. The Domain Name and Registrar

The disputed domain name <korea-adm.com> is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 7, 2023. On March 8, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 9, 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 (Whois Privacy Protection Service by MuuMuuDomain) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 10, 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 in English on March 10, 2023.

On March 10, 2023, the Center transmitted an email communication to the Parties in English and Japanese regarding the language of the proceeding. On March 10, 2023, the Complainant submitted a request that English be the language of the proceeding. On March 13 and 14, 2023, the Respondent or the person who uses the registrant’s email address (a Mr. Kim) sent several email communications to the Center in English submitting a request that Korean be the language of the proceeding and claiming they purchased the disputed domain name on behalf of their customer.

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 paragraphs 2 and 4 of the Rules, the Center formally notified the Respondent in English and Japanese of the Complaint, and the proceedings commenced on March 17, 2023. In accordance with paragraph 5 of the Rules, the due date for Response was April 6, 2023. The Respondent or the person who uses the registrant's email address (a Mr. Kim) sent another two email communications to the Center in English on March 23 and 24, 2023, and filed a Response in English on March 24, 2023, reiterating that they purchased the disputed domain name as an agent and they have no idea how the disputed domain name is being used, as well as indicating that the website associated with the disputed domain name has been stopped, and the disputed domain name can be transferred to the Complainant. On March 24, 2023, the Center informed the Parties that if they wanted to explore settlement options, the Complainant should submit a request to suspend the proceeding. On March 29, 2023, the Complainant requested the Center to proceed with the panel appointment.

The Center appointed Yuji Yamaguchi as the sole panelist in this matter on April 6, 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 paragraph 7 of the Rules.

4. Factual Background

The Complainant was founded in 1902, has an international presence in various industries, including in the global agricultural commodity and processing industry and is now a multi-billion-dollar company with over 30,000 employees serving more than 140 countries around the world.

The Complainant owns numerous trademark registrations for the ADM trademark (the "ADM Mark") including the United States Trademark Nos. 1386430 (registered on March 18, 1986) and 2766613 (registered on September 23, 2003), Japanese Trademark No. 4705445 (registered on August 29, 2003) and the Republic of Korea Trademark No. 4500009930000 (registered on March 7, 2000).

The Complainant registered the domain name <adm.com> on October 12, 1994 and maintains an extensive presence online with the website provided under the above domain name.

The disputed domain name was registered on January 17, 2023. At the time of filing of the Complaint, the disputed domain name was being promoted in a YouTube video, which has now been removed, as a fraudulent investment and trading mobile app called "ADM Korea", using the ADM Mark. The disputed domain name also resolved to a website using the ADM Mark and photos and captions taken directly from the Complainant's website, and providing information regarding how to set up an account with "ADM Korea" and transfer money into that account to begin investment.

5. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Complainant has been widely known by its initials, ADM, and has spent considerable time, effort, and resources in creating, building, and maintaining a truly international presence and reputation under the name ADM. As a result of promoting the ADM Mark and its continuous global use of the ADM Mark, the Complainant has acquired and built an enhanced international reputation and goodwill in the ADM Mark, which is now well known and famous. The Respondent has completely incorporated the ADM Mark into the disputed domain name for the sole purpose of defrauding the Complainant's customers and the public at large. The Respondent clearly created the disputed domain name to cause confusion with the Complainant's recognizable ADM Mark in an attempt to trade on the Complainant's goodwill and online presence. The "adm" portion is clearly the most prominent portion of the disputed domain name. The

preceding addition of “korea” to the disputed domain name does not negate, but rather contributes to, the confusing similarity with the ADM Mark, as the public may simply assume the disputed domain name to be the Korean division of the Complainant.

The Respondent is not, and has never been, an authorized reseller, service provider, licensee or distributor of the Complainant. The Respondent is not a good faith provider of goods or services under the disputed domain name and is not making a legitimate, noncommercial, or fair use of the disputed domain name without intent for commercial gain. The disputed domain name is being used as part of a fraudulent scheme. Lastly, the Complainant has not licensed or consented to allow the Respondent to use the ADM Mark or to register the disputed domain name and has no connection affiliated with the Respondent.

The Respondent is using the Complainant’s ADM Mark, name, and robust global online presence in bad faith via the disputed domain name in order to deceive the public and convince them that they are depositing their money and investing with a legitimate business. As of the filing date of this Complaint, the disputed domain name remains active, and thus the Respondent continues to use the Complainant’s ADM Mark, name, and logo in the disputed domain name and on its website. The Respondent prominently and illicitly displays the Complainant’s ADM Mark and name throughout the entirety of the website provided under the disputed domain name, for the sole purpose of portraying the ADM Mark as the source of the fraudulent mobile app.

B. Respondent

Several email communications were received from a Mr. Kim using the registrant email address, and he filed a Response in English on March 24, 2023 indicating that:

“We simply purchased the domain as an agent. We don’t know what services are in that domain. But, I received an email from WIPO and directly terminated the service of the actual domain user. The domain is not accessible now. I repeat again, I didn’t know what services are in that domain. Please tell me what you need, such as domain transfer.

[...]

I can transfer the domain to the complainant. I agree only if there is no financial damage.”

6. Discussion and Findings

6.1 Preliminary Issues

A. Respondent’s Identity

The Panel notes that paragraph 1 of the Rules defines the Respondent as “the holder of a domain-name registration against which a complaint is initiated”.

According to the Registrar, the registrant of the disputed domain name is makoto nakayama with an email address “onair@[...]”. The Center received several email communications and a Response signed off by a Mr. Kim using the registrant’s email address. According to Mr. Kim, they purchased the disputed domain name on behalf of the customer, and they are acting as an agent. However, Mr. Kim did not provide any information about this customer. Nor did the Center receive any communication from this customer during the proceeding.

Considering the above, in particular, the silence of the potential beneficial holder, the Panel finds in the present case that there is no evidence made available to the Panel on the existence and nature of any relationship between the listed registrant and the potential beneficial holder, which would allow the Panel to consider that the potential beneficial holder should be treated as a further Respondent.

In light of the above, the Panel finds that the Registrar-confirmed registrant of the disputed domain name with the email address “onair@[...]” should be considered as the sole Respondent in this proceeding. The Panel further notes that references to the registration and use by the Respondent shall be construed to include the final holder of the disputed domain name (if any).

B. Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, in the absence of an agreement between the Parties, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

The Complainant requests that the proceeding be held in English with the reason that the Registration Agreement provides that Japanese translation of the UDRP is for the convenience of the registrant, and only the original English UDRP shall always be in effect. However, the provision of the Registration Agreement that the original English UDRP shall always be in effect does not mean that the language of the Registration Agreement is English. The Registrar has confirmed that the language of the Registration Agreement of the disputed domain name is Japanese.

The Respondent requests that the proceeding be held in Korean. However, the Respondent sent all of the email communications to the Center including a formal Response in English. Therefore, the Respondent has some knowledge of the English language. The Panel finds that translating the Complaint in English to Japanese or Korean would bring additional costs to the Complainant and cause unnecessary delay of the proceeding.

In view of these circumstances of the administrative proceeding, the Panel decides that English should be the language of the proceeding.

6.2 Substantive Elements of the Policy

In accordance with paragraph 4(a) of the Policy, the Complainant must assert and prove the following three elements are present:

- (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.

A. Identical or Confusingly Similar

The disputed domain name incorporates the Complainant’s ADM Mark in its entirety together with the addition of the prefix “korea” and hyphen plus generic Top-Level Domain (“gTLD”) “.com”.

Where the disputed domain name incorporates the entirety of the relevant trademark, or where at least a dominant feature of the relevant mark is recognizable in the disputed domain name, the disputed domain name will normally be considered confusingly similar to the relevant mark for purposes of UDRP standing (see section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)). Generally, where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element in paragraph 4(a) of the Policy (see section 1.8 of the [WIPO Overview 3.0](#); see also *Archer-Daniels-Midland Company v. kimwoori*, WIPO Case No. [D2023-0358](#)).

The gTLD “.com” is viewed as a standard registration requirement and as such may be disregarded for the assessment of confusing similarity under the first element in paragraph 4(a) of the Policy (see section 1.11.1 of the [WIPO Overview 3.0](#)).

In light of the above, the disputed domain name should be considered confusingly similar to the Complainant’s ADM Mark, and thus, the first element in paragraph 4(a) of Policy is satisfied.

B. Rights or Legitimate Interests

As the Complainant asserts, the Complainant has not licensed or consented to allow the Respondent to use the ADM Mark or to register the disputed domain name and has no connection affiliated with the Respondent.

Moreover, since the distinct use of the ADM Mark connected with the advertisement of the disputed domain name appeared within the YouTube video promoting the fraudulent investment app and the deceptive descriptions of the apparent investment platform were uploaded on the website resolved from the disputed domain name, the Panel finds that the Respondent has not used the disputed domain name for any legitimate interest, but has used the disputed domain name to mislead the public into believing that the Respondent is affiliated with the Complainant and has tarnished the ADM Mark.

As a result, the Complainant has satisfied its burden of providing sufficient evidence to make a *prima facie* case showing that the Respondent lacks rights to or legitimate interests in the disputed domain name, and the Respondent has failed to produce any evidence to establish rights or legitimate interests in the disputed domain name.

Therefore, the Panel holds that the second element of paragraph 4(a) of the Policy is fulfilled.

C. Registered and Used in Bad Faith

The screenshot on the YouTube video associated with the disputed domain name shows the advertising slogan in Korean, “Type KOREA-ADM.COM in the address line to access the ADM official website (주소항에 KOREA-ADM.COM 을 입력하여 ADM 공식 홈페이지에 접속합니다)”. In addition, at the time of filing of the Complaint, the website resolved from the disputed domain name fraudulently displayed the Complainant’s name and ADM Mark at the top of the webpage, along with the Complainant’s signature leaf design logo and the phrase “Unlocking Nature. Enriching Life.” which is nearly identical to a phrase widely associated with the Complainant, “Unlocking Nature. Enriching Lives.”, which was filed as a United States Trademark application by the Complainant on September 1, 2022. The website resolved from the disputed domain name was clearly made to emulate the Complainant’s website to create a false belief of legitimacy and deceive the public into believing the Respondent’s fraudulent business is associated with the Complainant.

Therefore, the Panel views that the Respondent was clearly aware of the Complainant’s ADM Mark, and has attempted, for commercial gain, to intentionally trade on the goodwill of the Complainant’s ADM Mark, famous name, business reputation and online presence via the disputed domain name at the time of registering and using the disputed domain name. This amounts to bad faith under paragraph 4(b)(iv) of the Policy (see *Archer-Daniels-Midland Company v. shimin li, Softvip*, WIPO Case No. [D2023-0034](#)).

Although the disputed domain name currently resolves to an inactive site and is not being used, it does not prevent a finding of bad faith under the doctrine of passive holding in this case, in consideration of (i) the reputation of the Complainant’s ADM Mark, (ii) the failure of the Respondent to provide any evidence of actual or contemplated good-faith use, (iii) the Respondent’s use of a privacy service to conceal its identity when registering the disputed domain name, and (iv) the implausibility of any good faith use to which the disputed domain name may be put (see section 3.3 of the [WIPO Overview 3.0](#)).

Accordingly, the Panel concludes that the Respondent has registered and used the disputed domain name in bad faith and the third element of paragraph 4(a) of the Policy has been proved.

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

/Yuji Yamaguchi/

Yuji Yamaguchi

Sole Panelist

Date: April 20, 2023